



Local Government Council

Wednesday, April 19, 2006

3:30 P.M.

404 House Office Building

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Local Government Council

Start Date and Time: Wednesday, April 19, 2006 03:30 pm
End Date and Time: Wednesday, April 19, 2006 05:00 pm
Location: 404 HOB
Duration: 1.50 hrs

Consideration of the following bill(s):

HB 245 CS Florida Retirement System by Williams
HB 731 CS Florida Retirement System by Rice
HB 897 CS Florida Retirement System by Davis, M.
HB 1191 CS Telecommunications Service Regulation by Legg
HB 1447 CS Issuance of Licenses and Development Permits by Reagan
HB 1579 Sarasota Manatee Airport Authority by Reagan

NOTICE FINALIZED on 04/17/2006 16:07 by ADEYEMO.MARTHA

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 245 CS

Florida Retirement System

SPONSOR(S): Williams

TIED BILLS:

IDEN./SIM. BILLS: SB 1094

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Mitchell</u>	<u>Williamson</u>
2) <u>Local Government Council</u>	<u></u>	<u>Nelson</u> <i>fn</i>	<u>Hamby</u> <i>220</i>
3) <u>Fiscal Council</u>	<u></u>	<u></u>	<u></u>
4) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The CS for HB 245 expands the definition of compensation for firefighters, paramedics and emergency medical technicians by allowing any salary supplement received by a firefighter, paramedic or emergency medical technician to be considered compensation for retirement purposes if each of the following criteria apply:

- the salary supplement is a recurring payment received at least quarterly and in addition to the employee's regular or overtime salary; and
- the salary supplement is received for assignment, certifications, qualifications or successful completion of employer-approved education as provided in a formal written policy or contract that applies to all firefighters, paramedics or emergency medical technicians.

Any salary supplements meeting these criteria which were received by the Division of Retirement for employment prior to March 1, 2006, and which have not been returned to the contributing employer or credited to the employee by July 1, 2006, also will be considered compensation and credited to the employee.

The bill complies with the requirements of s. 14, Art. X of the State Constitution, which prohibits an increase in retirement benefits without providing funding for the increase on a sound actuarial basis.

There are some definitional, operational and policy questions raised by the bill.

This bill does not appear to create, modify or eliminate rulemaking authority.

This bill may have a fiscal impact on state and local government expenditures through the employer contribution to the retirement system for these supplemental payments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Retirement System

Chapter 121, F.S., the "Florida Retirement System Act" governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.¹

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.² The FRS also has participating employees in 151 cities and 186 independent special districts who have elected to join the system.³

The FRS offers a defined benefit plan that provides retirement, disability and death benefits for nearly 600,000 active members and over 270,000 retirees, surviving beneficiaries, and Deferred Retirement Option Program participants.⁴ Members of the FRS belong to one of five membership classes:

Regular Class ⁵	570,888 members	88.00%
Special Risk Class ⁶	68,466 members	10.59%
Special Risk Administrative Support Class ⁷	80 members	0.01%
Senior Management Service Class ⁸	6,823 members	1.10%
Elected Officers Class ⁹	2,122 members	0.30%

Each class is separately funded through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in ch. 121, F.S.¹⁰

To receive benefits under the FRS, a member must reach his or her "normal retirement date."¹¹ The normal retirement date depends on the membership class of the member and is based on a minimum number of years of credible service and age (e.g., six or more years and age 62 for a Regular Class member) or specified amount of credible service regardless of age (e.g., 30 years for a Regular Class member).¹²

¹ Section 121.025, F.S.

² Florida Department of Management Services, *Division of Retirement Main Page* (visited Jan. 11, 2006) < <http://www.frs.state.fl.us/> >.

³ *Id.*

⁴ *Id.*

⁵ Section 121.021(12), F.S.

⁶ Section 121.0515, F.S.

⁷ Section 121.0515(7), F.S.

⁸ Section 121.055, F.S.

⁹ Section 121.052, F.S.

¹⁰ See, e.g., Section 121.055(3)(a)1., F.S.

¹¹ Section 121.021(29), F.S.

¹² *Id.*

The amount of benefits a member ultimately receives is based on three key factors: (1) years of service, (2) accrual rate, and (3) average final compensation. "Average final compensation" is the "average of the five highest fiscal years of compensation for credible service."¹³

Relevant to the definition of average final compensation is the definition of "compensation": the monthly salary a member is paid by his or her employer for work performed arising from that employment.¹⁴ Compensation also includes overtime payments; accumulated annual leave payments; amounts withheld for tax sheltered annuities, deferred compensation programs, or any other type of salary reduction plan authorized under the Internal Revenue Code; and payments made in lieu of a permanent increase in the base rate of pay.¹⁵

Effect of Proposed Changes

This bill expands the definition of compensation for firefighters, paramedics and emergency medical technicians by allowing any salary supplement received by a firefighter, paramedic or emergency medical technician to be considered compensation for retirement purposes if each of the following criteria apply:

- the salary supplement is a recurring payment received at least quarterly and in addition to the employee's regular or overtime salary; and
- the salary supplement is received for assignment, certifications, qualifications or successful completion of employer-approved education as provided in a formal written policy or contract that applies to all firefighters, paramedics or emergency medical technicians.

Any salary supplements meeting these criteria which were received by the Division of Retirement for employment prior to March 1, 2006, and which have not been returned to the contributing employer or credited to the employee by July 1, 2006, also will be considered compensation and credited to the employee.

C. SECTION DIRECTORY:

Section 1: Amends subsection (22) of s. 121.021, F.S., to revise the definition of compensation.

Section 2: Provides legislative declarations and a determination that the act fulfills an important state interest.

Section 3: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to create, modify, amend or eliminate a state revenue source.

2. Expenditures:

This bill may create, modify, amend or eliminate state revenue expenditures.¹⁶

¹³ Section 121.021(24), F.S..

¹⁴ Section 121.021(22), F.S.

¹⁵ *Id.*

¹⁶ See Fiscal Comments *infra*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to create, modify, amend or eliminate a revenue source for local governments.

2. Expenditures:

This bill may create, modify, amend or eliminate revenue expenditures for local governments.¹⁷

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services provided a fiscal note from the enrolled actuary regarding this bill:

Allowing nonrecurring payments to be treated as compensation that may be recognized in the calculation of retirement benefits could lead to artificially inflated benefits. If benefit inflation occurs, it would be a source of actuarial losses which could lead to an increase in normal costs and unfunded actuarial liabilities, possibly resulting in higher contribution rates in the future for the FRS Special Risk Class. There would be a fiscal impact resulting from HB 245, but the nature and amount of these payments are not expected to be sufficient to require a specific increase in the Special Risk Class employer contribution rate to fund this proposal. Future actuarial experience studies and valuations of the FRS would reveal the impact, if any, of covering these payments as compensation for retirement purposes and be reflected in the contribution rate recommended by future valuations.¹⁸

The Department of Management Services also evaluated the fiscal impact of the bill:

Under current law, the supplemental payments covered by this bill are not reported to the Division of Retirement, so the employer contribution portion of the cost impact cannot be directly determined from our records. Also, the language does not require employers to create new programs for these payments, only to report these payments as compensation for the FRS if they exist on or after July 1, 2006. Each impacted employer would pay an additional 18.53% of such payments to cover the contributions for the FRS benefit and the HIS. We identified approximately 126 employers with at minimum of 10,506 employees who could have additional compensation reported to the FRS under HB 245.¹⁹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue.

This bill may, however, require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Yet, the bill appears to satisfy the requirements of s. 18, Art. VII

¹⁷ *Id.*

¹⁸ Florida Department of Management Services HB 245 (2006) Staff Analysis (Nov. 9, 2005) (on file with Department).

¹⁹ *Id.* Emphasis added.

of the State Constitution²⁰ because it provides that the act fulfills an important state interest and the expenditures are required by a law which appears to apply to all persons similarly situated, including the state and local governments.

2. Other:

Benefit changes to the state retirement system are governed by s. 14 of Art. X of the State Constitution:

State retirement systems benefit changes.—A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

According to the Department of Management Services, this bill complies with the requirements of s. 14 of Art. X of the State Constitution.²¹

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

Policy Change: Bonuses

Currently, the definition of compensation specifically excludes bonuses.²² A bonus is “a payment made in addition to an employee's regular or overtime salary, is usually nonrecurring, does not increase the employee's base rate of pay, and includes no commitment for payment in a subsequent year.”²³

Bonus payments were excluded from the definition of average final compensation in 1984 and from the definition of compensation in 1989. The Department of Management Services described the reason for these changes:

This change was enacted based upon recommendations from the consulting actuary and the Auditor General who sought to insure that promised benefits would be funded on a sound actuarial basis as required by the Florida Constitution. By excluding bonuses from consideration as compensation, retirement benefits would not be artificially inflated by payments at or near retirement that are not representative of the regular salary or regular payments received over a member's career. This way, unanticipated contribution rate increases are prevented and retirement benefits remain properly funded. Then, in 1989, the Legislature excluded bonus payments from the definition of “compensation,” thereby making reported

²⁰ Section 18 of Art. VII of the State Constitution provides that counties and municipalities may not be bound by a general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds unless it fulfills an important state interest and one of five criteria is met: (1) funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; (3) the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

²¹ *Id.*

²² Section 121.021(22), F.S.

²³ Section 121.021(47), F.S.

compensation consistent with compensation eligible for inclusion in a member's average final compensation.²⁴

To the extent that any of these salary supplements can operate without the constraints of "payments in addition to an employee's base pay,"²⁵ they may operate like bonuses. Thus, the bill may create a potentially significant policy change as it relates to bonuses as well as a conflict between the definition of compensation and the definition of bonuses.

Differential Treatment of Class Members

This bill permits certain salary supplements to be "compensation" for retirement purposes only for firefighters, paramedics or emergency medical technicians. Yet, the special risk class also includes law enforcement officers,²⁶ correctional officers,²⁷ community-based correctional probation officers,²⁸ youth custody officers,²⁹ certain employees whose duties involve contact with patients or inmates in a correctional or forensic facility or institution,³⁰ and employees of a law enforcement agency or medical examiner's office who are engaged in a forensic discipline.³¹ It is not clear how the salary supplements for firefighters, paramedics or emergency medical technicians differ from those of the other class members such that the salary supplements for one group are counted for retirement purposes, but the salary supplements for the rest of the class are not.

Reporting for "All Periods Prior to July 1, 2006"

The bill also provides that employer-reported contributions on supplemental payments shall be compensation for all periods prior to July 1, 2006. It is not clear if that provision only applies to contributions that were previously reported to the FRS—even though these contributions may not have been allowed by law³²—or if the bill allows reporting of previously unreported salary supplements.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Governmental Operations Committee adopted an amendment and reported the bill favorably with a committee substitute. The amendment revised the types of salary supplements that can be considered compensation for retirement purposes for firefighters, paramedics or emergency medical technicians. The amendment also limited the retroactivity of the bill.

²⁴ Florida Department of Management Services, *supra* note 18.

²⁵ Section 121.021(22)3., F.S.

²⁶ Section 121.0515(2)(a), F.S.

²⁷ Section 121.0515(2)(c), F.S.

²⁸ Section 121.0515(2)(e), F.S.

²⁹ Section 121.0515(2)(g), F.S.

³⁰ Section 121.0515(2)(f), F.S.

³¹ Section 121.0515(2)(h), F.S.

³² *Id.*

HB 245

2006
CS

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida Retirement System; amending s. 121.021, F.S.; redefining the term "compensation" to include certain supplementary payments made to firefighters, paramedics, and emergency medical technicians; providing legislative findings and a declaration of important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (22) of section 121.021, Florida Statutes, is amended to read:

121.021 Definitions.--The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(22) "Compensation" means the monthly salary paid a member by his or her employer for work performed arising from that employment.

HB 245

2006
CS

- 24 (a) Compensation shall include:
- 25 1. Overtime payments paid from a salary fund.
- 26 2. Accumulated annual leave payments.
- 27 3. Payments in addition to the employee's base rate of pay
- 28 if all the following apply:
- 29 a. The payments are paid according to a formal written
- 30 policy that applies to all eligible employees equally;
- 31 b. The policy provides that payments shall commence no
- 32 later than the 11th year of employment;
- 33 c. The payments are paid for as long as the employee
- 34 continues his or her employment; and
- 35 d. The payments are paid at least annually.
- 36 4. Amounts withheld for tax sheltered annuities or
- 37 deferred compensation programs, or any other type of salary
- 38 reduction plan authorized under the Internal Revenue Code.
- 39 5. Payments made in lieu of a permanent increase in the
- 40 base rate of pay, whether made annually or in 12 or 26 equal
- 41 payments within a 12-month period, when the member's base pay is
- 42 at the maximum of his or her pay range. When a portion of a
- 43 member's annual increase raises his or her pay range and the
- 44 excess is paid as a lump sum payment, such lump sum payment
- 45 shall be compensation for retirement purposes.
- 46 6. Effective July 1, 2002, salary supplements made
- 47 pursuant to s. 1012.72 requiring a valid National Board for
- 48 Professional Standards certificate, notwithstanding the
- 49 provisions of subparagraph 3.
- 50 7. Effective July 1, 2006, and notwithstanding the
- 51 provisions of subparagraph 3., any salary supplement received by

HB 245

2006
CS

a firefighter, paramedic, or emergency medical technician if
each of the following criteria applies:

a. The salary supplement is a recurring payment received
at least quarterly and in addition to the employee's regular or
overtime salary.

b. The salary supplement is received for assignment,
certifications, qualifications, or successful completion of
employer-approved education as provided in a formal written
policy or contract that applies to all firefighters, paramedics,
or emergency medical technicians.

Any salary supplement meeting the criteria of this subparagraph
that was received by the Division of Retirement for employment
prior to March 1, 2006, and that has not been returned to the
contributing employer or credited to the employee by July 1,
2006, shall also be compensation and credited to the employee.

Section 2. It is declared by the Legislature that
firefighters, emergency medical technicians, and paramedics
perform state and municipal functions; that it is their duty to
protect life and property at their own risk and peril; that it
is their duty to continuously instruct school personnel, public
officials, and private citizens about safety; and that their
activities are vital to the public safety. Therefore, the
Legislature declares that it is a proper and legitimate state
purpose to provide a uniform retirement system for the benefit
of firefighters, emergency medical technicians, and paramedics
and intends, in implementing the provisions of s. 14, Art. X of
the State Constitution as they relate to municipal and special

HB 245

2006
CS

80 district pension trust fund systems and plans, that such
81 retirement systems or plans be managed, administered, operated,
82 and funded in such manner as to maximize the protection of
83 pension trust funds. Pursuant to s. 18, Art. VII of the State
84 Constitution, the Legislature determines and declares that the
85 provisions of this act fulfill an important state interest.

86 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 731 CS

Florida Retirement System

SPONSOR(S): Rice

TIED BILLS:

IDEN./SIM. BILLS: SB 1378

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Stark/Mitchell</u>	<u>Williamson</u>
2) <u>Local Government Council</u>	<u></u>	<u>Nelson</u> <i>JP</i>	<u>Hamby</u> <i>WQ</i>
3) <u>Fiscal Council</u>	<u></u>	<u></u>	<u></u>
4) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The CS for HB 731 expands the Special Risk Class of the Florida Retirement System to include individuals employed by a county or a sheriff as registered nurses, licensed practical nurses, or advanced registered nurse practitioners whose duties involve spending at least 75 percent of their time performing nursing acts requiring contact with inmates in a county detention facility. The number of nurses potentially affected by this bill is unknown. A number of county sheriffs' offices, however, contract with private companies for nurses, and these employees would not be affected.

This bill does not appear to create, modify or eliminate rulemaking authority.

The primary fiscal impact of the bill is a higher required retirement contribution rate paid by the employer. Any fiscal impact resulting from a change in class demographics or experience will be reflected in future valuations of the Florida Retirement System.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government

This bill expands the Special Risk Class to include nurses in county detention facilities.

Empower families

Certain nurses employed by counties or sheriffs could experience increased retirement benefits as a result of the bill.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Retirement System

The Florida Retirement System (FRS) is the fourth largest public retirement system in the United States, covering 648,379 active employees, 237,730 retirees and their surviving beneficiaries, and 31,457 participants of the Deferred Retirement Option Program (DROP).¹ The active membership is divided into five membership classes: Regular Class, Special Risk Class, Special Risk Administrative Support Class, Elected Officers' Class and Senior Management Service Class. Each class is separately funded based upon the costs attributable to the members of that class.

As stated in s. 121.0515(1), F.S., in creating the Special Risk Class of membership within the FRS, the Legislature recognized that persons employed in certain categories of law enforcement, firefighting, criminal detention and emergency medical care positions must, as an essential function of their positions, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. The Legislature further found that as persons in such positions age, they may not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public, and their coworkers. In response, the Legislature established a special class to permit these employees to retire at an earlier age and with less service without suffering economic deprivation compared to other members with normal retirement after 30 years of service or age 62 and vested.

Special Risk Class membership differs from Regular Class membership in the following ways:

- A Special Risk Class member earns retirement credit at the rate of three percent of average final compensation for each year of service, as opposed to the 1.6 percent—1.68 percent credit per year of service earned by a Regular Class member.
- A Special Risk Class member qualifies for normal retirement at an earlier age (age 55 versus age 62) or with fewer years of service (25 years versus 30 years) than a Regular Class member.
- A Special Risk Class member who is totally and permanently disabled in the line of duty qualifies for a 65 percent minimum Option 1 benefit payment compared to a Regular Class member similarly disabled who qualifies for a 42 percent minimum Option 1 benefit payment.²

¹ Department of Management Services 2006 Substantive Bill Analysis, HB 731, February 23, 2006, pg. 3.

² *Id.*, pg. 4.

An Option 1 benefit payment provides a continuing monthly benefit to the retiring member for his or her lifetime.

The benefit improvements gained by Special Risk Class members are funded by higher employer contributions. Currently, the Special Risk Class makes up nearly 11 percent of the active FRS membership. For the 2005-06 plan year, the employer contribution rate for the Special Risk Class is 17.37 percent—slightly over 2.5 times higher than the 6.67 percent for the Regular Class. Under the FRS Investment Plan, the amount contributed to an individual member account increases from 9.25 percent to 21.33 percent when the member moves from the Regular Class to the Special Risk Class.³

State Nurses

Currently, nurses employed by the state who operate under specific class codes and who spend at least 75 percent of their time performing duties which involve contact with patients or inmates in a correctional or forensic facility or institution qualify for membership in the Special Risk Class. Such nurses gained Special Risk status in 1999.

County Nurses

There are approximately 28 counties that employ nurses (including an estimated 300 Licensed Nurse Practitioners) at county correctional facilities. The remaining counties opt to follow one of two options: either contract out nursing services, which roughly 27 counties do, or provide no nursing services. Counties with no nursing services call Emergency Medical Technicians to the facility, or have certified clerks on staff.

Effect of Proposed Changes

The bill expands the membership of the Special Risk Class to include individuals who are employed by a county or a sheriff to work as registered nurses, licensed practical nurses or advanced registered nurse practitioners, as defined in s. 464.003 (4)-(6), F.S.,⁴ exclusively in a county detention facility, as defined in s. 951.23(1)(a), F.S.⁵

The member must spend at least 75 percent of his or her time performing nursing acts, as defined in s. 464.003(3), F.S., which involve contact with inmates.

The bill provides a declaration of important state interest.

The bill takes effect October 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 121.021(15)(f), F.S., to include certain nurses in the Special Risk Class.

Section 2: Amends s. 121.0515(2)(i), F.S., to establish the criteria for nurses in the Special Risk Class.

Section 3: Provides a declaration of important state interest.

Section 4: Provides an effective date of October 1, 2006.

³ *Id.*, pg. 2.

⁴ Pursuant to s. 464.003, F.S., “registered nurse” means any person licensed in this state to practice professional nursing; “licensed practical nurse” means any person licensed in this state to practice practical nursing; and “advanced registered nurse practitioner” means any person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice.

⁵ Section 951.23(1)(a), F.S., provides that a “county detention facility” means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either felony or misdemeanor.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The FRS will experience increased revenue from FRS employers paying the contribution rate for the Special Risk Class instead of the Regular Class on behalf of employees affected by the bill.⁶

2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

FRS employers would pay an increased retirement contribution rate for their FRS employees who are affected by this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not have a direct economic impact on persons in the private sector.

D. FISCAL COMMENTS:

Membership in the Special Risk Class has grown by more than 25 percent in the last six years. There were 54,683 active Special Risk Class members as of June 1999. In June 2005, there were 71,383 members filling Special Risk Class positions: 68,466 active members and 2,917 Deferred Retirement Option Program participants.⁷

This bill would add an unknown number of additional positions to the Special Risk Class. The fiscal impact to the FRS is primarily funded through the required employer contributions for members of the Special Risk Class. Any fiscal impact resulting from a change in class demographics or experience would be reflected in future valuations of the FRS.⁸

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that municipalities have to raise revenue.

This bill may, however, require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Yet, the bill appears to satisfy the requirements of s.18, Art. VII of the State Constitution⁹ because it provides that the act fulfills an important state interest and the

⁶ *Id.*, pg. 1.

⁷ *Id.*, pg. 2.

⁸ *Id.*, pg. 7.

⁹ Section 18 of Art. VII of the State Constitution provides that counties and municipalities may not be bound by a general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds unless it fulfills an important state interest and one of five criteria is met: (1) funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature

expenditures are required by a law which appears to apply to all persons similarly situated, including the state and local governments.

2. Other:

Section 14, Art. X of the State Constitution

Since 1976, the Florida Constitution has required that benefit improvements under public pension plans in the State of Florida must be concurrently funded on a sound actuarial basis, as set forth below:

State requirement systems benefit changes.—A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding to the increase in benefits on a sound actuarial basis.

The bill appears to comply with the requirements of s. 14, Art. X of the State Constitution.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify or eliminate rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

Because the FRS covers participating employees in state, county and municipal government, FRS members who perform similar duties in municipal detention facilities would be treated differently than their county and state counterparts.¹⁰

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Governmental Operations Committee adopted an amendment and reported the bill favorably with a committee substitute. The amendment provided further definition and criteria for nurses employed in county detention facilities who are included in the Special Risk Class.

authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; (3) the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

¹⁰ Department of Management Services 2006 Substantive Bill Analysis, HB 731, February 23, 2006, pg. 3.

HB 731

2006
CS

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida Retirement System; amending ss. 121.021 and 121.0515, F.S.; providing membership in the Special Risk Class for persons employed as nurses in county correctional facilities; providing a declaration of important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (15) of section 121.021, Florida Statutes, is amended to read:

121.021 Definitions.--The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(15)(a) Until October 1, 1978, "special risk member" means any officer or employee whose application is approved by the administrator and who receives salary payments for work performed as a peace officer; law enforcement officer; police officer; highway patrol officer; custodial employee at a

HB 731

2006
CS

24 correctional or detention facility; correctional agency employee
25 whose duties and responsibilities involve direct contact with
26 inmates, but excluding secretarial and clerical employees;
27 firefighter; or an employee in any other job in the field of law
28 enforcement or fire protection if the duties of such person are
29 certified as hazardous by his or her employer.

30 (b) Effective October 1, 1978, "special risk member" means
31 a member of the Florida Retirement System who is designated as a
32 special risk member by the division in accordance with s.
33 121.0515. Such member must be employed as a law enforcement
34 officer, a firefighter, or a correctional officer and must meet
35 certain other special criteria as set forth in s. 121.0515.

36 (c) Effective October 1, 1999, "special risk member" means
37 a member of the Florida Retirement System who is designated as a
38 special risk member by the division in accordance with s.
39 121.0515. Such member must be employed as a law enforcement
40 officer, a firefighter, a correctional officer, an emergency
41 medical technician, or a paramedic and must meet certain other
42 special criteria as set forth in s. 121.0515.

43 (d)1. Effective January 1, 2001, "special risk member"
44 includes any member who is employed as a community-based
45 correctional probation officer and meets the special criteria
46 set forth in s. 121.0515(2)(e).

47 2. Effective January 1, 2001, "special risk member"
48 includes any professional health care bargaining unit or non-
49 unit member who is employed by the Department of Corrections or
50 the Department of Children and Family Services and meets the
51 special criteria set forth in s. 121.0515(2)(f).

HB 731

2006
CS

(e) Effective July 1, 2001, the term "special risk member" includes any member who is employed as a youth custody officer by the Department of Juvenile Justice and meets the special criteria set forth in s. 121.0515(2)(g).

(f) Effective October 1, 2006, the term "special risk member" includes any member who is employed by a county or a sheriff to work as a registered nurse, a licensed practical nurse, or an advanced registered nurse practitioner exclusively in a county detention facility as defined in s. 951.23(1)(a) and who meets the special criteria set forth in s. 121.0515(2)(i).

Section 2. Subsection (2) of section 121.0515, Florida Statutes, is amended to read:

121.0515 Special risk membership.--

(2) CRITERIA.--A member, to be designated as a special risk member, must meet the following criteria:

(a) The member must be employed as a law enforcement officer and be certified, or required to be certified, in compliance with s. 943.1395; however, sheriffs and elected police chiefs shall be excluded from meeting the certification requirements of this paragraph. In addition, the member's duties and responsibilities must include the pursuit, apprehension, and arrest of law violators or suspected law violators; or the member must be an active member of a bomb disposal unit whose primary responsibility is the location, handling, and disposal of explosive devices; or the member must be the supervisor or command officer of a member or members who have such responsibilities; provided, however, administrative support personnel, including, but not limited to, those whose primary

HB 731

2006
CS

duties and responsibilities are in accounting, purchasing,
legal, and personnel, shall not be included;

(b) The member must be employed as a firefighter and be
certified, or required to be certified, in compliance with s.
633.35 and be employed solely within the fire department of a
local government employer or an agency of state government with
firefighting responsibilities. In addition, the member's duties
and responsibilities must include on-the-scene fighting of
fires, fire prevention, or firefighter training; direct
supervision of firefighting units, fire prevention, or
firefighter training; or aerial firefighting surveillance
performed by fixed-wing aircraft pilots employed by the Division
of Forestry of the Department of Agriculture and Consumer
Services; or the member must be the supervisor or command
officer of a member or members who have such responsibilities;
provided, however, administrative support personnel, including,
but not limited to, those whose primary duties and
responsibilities are in accounting, purchasing, legal, and
personnel, shall not be included and further provided that all
periods of creditable service in fire prevention or firefighter
training, or as the supervisor or command officer of a member or
members who have such responsibilities, and for which the
employer paid the special risk contribution rate, shall be
included;

(c) The member must be employed as a correctional officer
and be certified, or required to be certified, in compliance
with s. 943.1395. In addition, the member's primary duties and
responsibilities must be the custody, and physical restraint

HB 731

2006
CS

108 when necessary, of prisoners or inmates within a prison, jail,
109 or other criminal detention facility, or while on work detail
110 outside the facility, or while being transported; or the member
111 must be the supervisor or command officer of a member or members
112 who have such responsibilities; provided, however,
113 administrative support personnel, including, but not limited to,
114 those whose primary duties and responsibilities are in
115 accounting, purchasing, legal, and personnel, shall not be
116 included; however, wardens and assistant wardens, as defined by
117 rule, shall participate in the Special Risk Class;

118 (d) The member must be employed by a licensed Advance Life
119 Support (ALS) or Basic Life Support (BLS) employer as an
120 emergency medical technician or a paramedic and be certified in
121 compliance with s. 401.27. In addition, the member's primary
122 duties and responsibilities must include on-the-scene emergency
123 medical care or direct supervision of emergency medical
124 technicians or paramedics, or the member must be the supervisor
125 or command officer of one or more members who have such
126 responsibility. However, administrative support personnel,
127 including, but not limited to, those whose primary
128 responsibilities are in accounting, purchasing, legal, and
129 personnel, shall not be included;

130 (e) The member must be employed as a community-based
131 correctional probation officer and be certified, or required to
132 be certified, in compliance with s. 943.1395. In addition, the
133 member's primary duties and responsibilities must be the
134 supervised custody, surveillance, control, investigation, and
135 counseling of assigned inmates, probationers, parolees, or

HB 731

2006
CS

community controllees within the community; or the member must be the supervisor of a member or members who have such responsibilities. Administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal services, and personnel management, shall not be included; however, probation and parole circuit and deputy circuit administrators shall participate in the Special Risk Class;

(f) The member must be employed in one of the following classes and must spend at least 75 percent of his or her time performing duties which involve contact with patients or inmates in a correctional or forensic facility or institution:

1. Dietitian (class codes 5203 and 5204);
2. Public health nutrition consultant (class code 5224);
3. Psychological specialist (class codes 5230 and 5231);
4. Psychologist (class code 5234);
5. Senior psychologist (class codes 5237 and 5238);
6. Regional mental health consultant (class code 5240);
7. Psychological Services Director--DCF (class code 5242);
8. Pharmacist (class codes 5245 and 5246);
9. Senior pharmacist (class codes 5248 and 5249);
10. Dentist (class code 5266);
11. Senior dentist (class code 5269);
12. Registered nurse (class codes 5290 and 5291);
13. Senior registered nurse (class codes 5292 and 5293);
14. Registered nurse specialist (class codes 5294 and 5295);
15. Clinical associate (class codes 5298 and 5299);

HB 731

2006
CS

164 16. Advanced registered nurse practitioner (class codes
165 5297 and 5300);
166 17. Advanced registered nurse practitioner specialist
167 (class codes 5304 and 5305);
168 18. Registered nurse supervisor (class codes 5306 and
169 5307);
170 19. Senior registered nurse supervisor (class codes 5308
171 and 5309);
172 20. Registered nursing consultant (class codes 5312 and
173 5313);
174 21. Quality management program supervisor (class code
175 5314);
176 22. Executive nursing director (class codes 5320 and
177 5321);
178 23. Speech and hearing therapist (class code 5406); or
179 24. Pharmacy manager (class code 5251);
180 (g) The member must be employed as a youth custody officer
181 and be certified, or required to be certified, in compliance
182 with s. 943.1395. In addition, the member's primary duties and
183 responsibilities must be the supervised custody, surveillance,
184 control, investigation, apprehension, arrest, and counseling of
185 assigned juveniles within the community; ~~or~~
186 (h) The member must be employed by a law enforcement
187 agency or medical examiner's office in a forensic discipline
188 recognized by the International Association for Identification
189 and must qualify for active membership in the International
190 Association for Identification. The member's primary duties and
191 responsibilities must include the collection, examination,

HB 731

2006
CS

192 preservation, documentation, preparation, or analysis of
193 physical evidence or testimony, or both, or the member must be
194 the direct supervisor, quality management supervisor, or command
195 officer of one or more individuals with such responsibility.
196 Administrative support personnel, including, but not limited to,
197 those whose primary responsibilities are clerical or in
198 accounting, purchasing, legal, and personnel, shall not be
199 included; ~~or-~~

200 (i) The member must be employed by a county or a sheriff
201 to work exclusively in a county detention facility, as defined
202 in s. 951.23(1)(a), as a registered nurse, a licensed practical
203 nurse, or an advanced registered nurse practitioner, as defined
204 in s. 464.003(4)-(6), and must spend at least 75 percent of his
205 or her time performing nursing acts, as described in s.
206 464.003(3), which involve contact with inmates.

207 Section 3. The Legislature finds that a proper and
208 legitimate state purpose is served when employees and retirees
209 of the state and its political subdivisions and the dependents,
210 survivors, and beneficiaries of such employees and retirees are
211 extended the basic protections afforded by governmental
212 retirement systems. These persons must be provided benefits that
213 are fair and adequate and that are managed, administered, and
214 funded in a sound actuarial manner, as required by section 14,
215 Article X of the State Constitution and part VII of chapter 112,
216 Florida Statutes. Therefore, the Legislature hereby determines
217 and declares that this act fulfills an important state interest.

218 Section 4. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 897 CS
SPONSOR(S): Davis and others
TIED BILLS:

Florida Retirement System

IDEN./SIM. BILLS: SB 1822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Mitchell</u>	<u>Williamson</u>
2) <u>Local Government Council</u>	<u></u>	<u>Nelson</u> <i>SPN</i>	<u>Hamby</u> <i>62 e</i>
3) <u>Fiscal Council</u>	<u></u>	<u></u>	<u></u>
4) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The CS for HB 897 expands the Special Risk Class of the Florida Retirement System by including any person employed as a pilot or an aerial applicator by an authorized state agency or municipality, county or special district. These pilots or aerial applicators must be licensed by the Federal Aviation Administration and licensed or certified as an arthropod control applicator as required by the Department of Agriculture and Consumer Services. These pilots or aerial applicators also must have as their primary duties and responsibilities, piloting or co-piloting, often at low altitudes, a rotary-wing or fixed-wing aircraft for chemical application of pesticides for controlling mosquitoes or other arthropods.

The bill makes legislative findings and declares an important state interest.

This bill does not appear to create, modify or eliminate rulemaking authority.

This bill does not appear to impact state or local government revenues. The bill, however, requires the public employers of these pilots to pay an additional retirement contribution rate of 10.70 percent of such employees' salaries. This increase in the required contribution rate appears to satisfy the constitutional requirement to fund benefit increases to public retirement or pension systems.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government

This bill expands the Special Risk Class to include certain pilots and aerial applicators who fly aircraft and apply pesticides to control mosquitoes or other arthropods.

Empower families

Certain pilots or aerial applicators employed by governmental agencies could realize increased retirement benefits as a result of the bill.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Mosquito Control in Florida

Chapter 388, F.S., provides for the creation and operation of mosquito control districts. Cities, towns and counties, or any portion thereof, are authorized to create special taxing districts for the control of arthropods,¹ to include mosquitoes.² The authority provided in s. 125.01, F.S., which sets forth the statutory powers of counties, is the preferred method for creating these mosquito control districts; yet, districts which were established under the former petition process may continue to operate.³ Some mosquito control districts have been established by special act of the Legislature.⁴

According to the Bureau of Entomology and Pest Control within the Department of Agriculture and Consumer Services and the Department of Management Services, there currently are 57 mosquito control districts:

- 35 districts are operated by boards of county commissioners;
- seven districts are dependent districts of a county; and
- 15 districts are independent special districts.⁵

All of the employees of the mosquito control districts which are operated by a county or under a county participate in the Florida Retirement System. Thirteen of the independent special districts participate in the Florida Retirement System.⁶

Twenty-one of these mosquito control districts utilize aircraft for mosquito control—although four of the counties contract for these pilot services.⁷ The Department of Management Services estimates that there are 35 pilots employed in full-time positions by the various mosquito control districts.⁸

¹ Section 388.011, F.S. (defining “arthropod” as those insects of public health or nuisance importance, including all mosquitoes, midges, sand flies, dog flies, yellow flies and house flies).

² Section 388.021(1), F.S.

³ Section 388.021(2), F.S.

⁴ See, e.g., ch. 99-449, L.O.F. (Anastasia Mosquito Control District; St. Johns Co.).

⁵ Florida Department of Agriculture and Consumer Services, Division of Agriculture Environmental Services, Bureau of Entomology and Pest Control, *Mosquito Control Directory*, available at <http://www.flaes.org/aes-ent/mosquito/mosqcontroldirectory.html> (last visited Mar. 29, 2006); Department of Management Services, HB 897 (2006) Substantive Bill Analysis (Mar. 14, 2006) (on file with Department) at p. 7) [hereinafter “DMS Analysis”].

⁶ DMS Analysis at p. 7.

⁷ *Id.*

⁸ *Id.* at p. 8.

The Florida Retirement System

Chapter 121, F.S., the "Florida Retirement System Act," governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.⁹

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.¹⁰ The FRS also has participating employees in the 151 cities and 186 independent special districts who have elected to join the system.¹¹

The FRS offers a defined benefit plan that provides retirement, disability and death benefits for nearly 600,000 active members and over 270,000 retirees, surviving beneficiaries, and Deferred Retirement Option Program participants.¹² Members of the FRS belong to one of five membership classes:

Regular Class ¹³	570,888 members	88.00%
Special Risk Class ¹⁴	68,466 members	10.59%
Special Risk Administrative Support Class ¹⁵	80 members	0.01%
Senior Management Service Class ¹⁶	6,823 members	1.10%
Elected Officers Class ¹⁷	2,122 members	0.30%

Each class is separately funded through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in ch. 121, F.S.¹⁸

The Special Risk Class and its Expansion

The Special Risk Class of the FRS was created to recognize that certain employees, because they perform work that is physically demanding or arduous or that requires extraordinary agility and mental acuity, may need to retire at an earlier age with less service than other types of employees.¹⁹ As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.²⁰ Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the member's average final compensation.²¹ These increased benefits are funded through higher employer contribution rates: 17.37 percent of gross compensation, effective July 1, 2005, and 21.91 percent, effective July 1, 2006.²²

The only employees originally in the Special Risk Class were law enforcement officers, correctional officers and firefighters.²³ Starting in 1999, however, the Legislature began to dramatically expand the membership of this class:

⁹ Section 121.025, F.S.

¹⁰ Florida Department of Management Services, *Florida Division of Retirement. Main Page* (visited Jan. 11, 2006) < <http://www.frs.state.fl.us/> >.

¹¹ *Id.*

¹² *Id.*

¹³ Section 121.021(12), F.S.

¹⁴ Section 121.0515, F.S.

¹⁵ Section 121.0515(7), F.S.

¹⁶ Section 121.055, F.S.

¹⁷ Section 121.052, F.S.

¹⁸ *See, e.g.*, Section. 121.055(3)(a)1., F.S.

¹⁹ *Id.*

²⁰ Section 121.021(29), F.S. (defining normal retirement date; this contrasts with members of the Regular Class who can retire at age 62 or with 30 years of credible service).

²¹ Section 121.091(1)(a)2.h., F.S. (compared with 1.60 percent to 1.68 percent for members of the Regular Class).

²² Section 121.71(3), F.S. (compared with 6.67 percent, effective July 1, 2005, and 9.53 percent, effective July 1, 2006, for members of the Regular Class).

²³ Ch. 78-308, L.O.F.; codified as s.121.0515, F.S.

1999	Emergency Medical Technicians and Paramedics ²⁴
2000	Community-Based Correctional Probation Officers ²⁵
2000	24 types of employees of correctional or forensic facilities or institutions ²⁶
2001	Youth Custody Officers ²⁷
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline ²⁸

This bill continues the expansion of the Special Risk Class by including in the definition of "special risk member" and the criteria for special risk membership any person who is employed as a pilot or aerial applicator by an authorized state agency or municipality, county or special district,²⁹ and who has the following qualifications:

- licensed as a pilot by the Federal Aviation Administration;
- licensed or certified as an arthropod control applicator as required by the Department of Agriculture and Consumer Services; and
- has as his or her primary duties and responsibilities, piloting or co-piloting, often at low altitudes, a rotary-wing or fixed-wing aircraft for chemical application of pesticides for controlling mosquitoes or other arthropods.

Constitutional Requirements for Retirement or Pension System Increases

Section 14 of Art. X of the State Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.³⁰ Because employers will pay an additional contribution rate of 10.70 percent of salary for these mosquito control pilots, the bill appears to satisfy this constitutional requirement.³¹

²⁴ Ch. 99-392, L.O.F., s. 23.

²⁵ Ch. 2000-169, L.O.F., s. 29.

²⁶ *Id.* (The following employees must spend at least 75 percent of their time performing duties which involve contact with patients or inmates to qualify for the Special Risk Class: dietitian; public health nutrition consultant; psychological specialist; psychologist; senior psychologist; regional mental health consultant; psychological services director-DCF; pharmacist; senior pharmacist (class codes 5248 and 5249); dentist; senior dentist; registered nurse; senior registered nurse; registered nurse specialist; clinical associate; advanced registered nurse practitioner; advanced registered nurse practitioner specialist; registered nurse supervisor; senior registered nurse supervisor; registered nursing consultant; quality management program supervisor; executive nursing director; speech and hearing therapist; and pharmacy manager.).

²⁷ Ch. 2001-125, L.O.F., s. 43.

²⁸ Ch. 2005-167, L.O.F., s. 1; codified as s.121.0515(2)(h), F.S. (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification). *See, also* International Association for Identification at <http://www.theiai.org/> (last visited Mar. 27, 2006).

²⁹ HB 897 CS (2005) (authorized under ch. 388, F.S., or by special act).

³⁰ Part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of s. 14, Art. X of the State Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

³¹ DMS Analysis at pp. 9-10.

C. SECTION DIRECTORY:

- Section 1: Creates paragraph (f) within subsection (15) of s. 121.021, F.S., to expand the definition of special risk member to include mosquito control pilots.
- Section 2: Amends subsection (2) of s.121.0515, F.S., to include mosquito control pilots.
- Section 3: Declares a statement of important state interest.
- Section 4: Provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Florida Retirement System will receive increased contributions for any pilots flying aircraft for mosquito control treatment who are employed by public employers participating in the Florida Retirement System.

2. Expenditures:

This bill may have a fiscal impact on state government revenues if there are any pilots flying aircraft for mosquito control treatment employed by state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill will have a fiscal impact on local government revenues as these employers will be required to pay the Special Risk Class contribution rate for the affected employees.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There does not appear to be a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services noted the following fiscal impact for the bill:

Based on current salary information available for mosquito control pilots who are members of the Florida Retirement System, it appears that the annual salary for such pilots ranges from about \$36,900 to around \$85,000 (averaging about \$60,300). While the actual cost to Florida public employers is unknown, if in fact there were just 35 such pilots working fulltime who earn an average annual salary of \$60,300, the statewide cost to affected employers in increased retirement contributions for FY 2005/06 would be \$225,823.³²

The Department of Management Services provided the following fiscal note from the enrolled actuary regarding this bill:

For Special Risk membership, the employers of the new special risk members will pay an additional 10.70% of pay (the difference between the Regular and Special Risk Class rates, for

³² *Id.* at p. 8.

the period from July 1, 2005 – June 30, 2006) for each affected member, and the bill therefore complies with the requirements of article X, section 14 of the Florida Constitution and of chapter 112, part VII, Florida Statutes. Any changes to the demographics and actuarial experience of the Special Risk Class resulting from this bill that result in additional fiscal impact will be reflected in future valuations and experience studies of the Florida Retirement System.³³

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue.

This bill is expected, however, to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Because the bill provides that it fulfills an important state interest and the expenditures required by the bill appear to apply to all persons similarly situated, including the state and local governments, the bill appears to satisfy the requirements of s. 18 of Art. VII of the State Constitution.³⁴

2. Other:

Section 14, Art. X of the State Constitution

As previously discussed, benefit increases to public retirement or pension systems may not be made unless funding is concurrently provided for the increase. The Department of Management Services concludes that the bill complies with this constitutional requirement.³⁵

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

Continued Expansion of the Special Risk Class

This bill proposes an additional expansion of the Special Risk Class. The Legislature ultimately must determine whether these pilots or aerial applicators perform work that is consistent with the intent of this class.³⁶ The Legislature also must be aware, as noted by the Department of Management Services, that this bill may encourage other groups to seek membership in the Special Risk Class or create inequities between different positions.³⁷

³³ *Id.* at pp. 9-10.

³⁴ Section 18 of Art. VII of the State Constitution provides that counties and municipalities may not be bound by a general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds unless it fulfills an important state interest and one of five criteria is met: (1) funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; (3) the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

³⁵ DMS Analysis at pp. 9-10.

³⁶ Section 121.0515(1), F.S. (work that is physically demanding or arduous or that requires extraordinary agility and mental acuity, may need to retire at an earlier age with less service than other types of employees).

³⁷ *Id.*

- *Encouraging Other Groups:* Other pilots, for example, may seek to become part of the Special Risk Class “based solely on their jobs as aviators, rather than on their performing work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, such that after age 55 (or 25 years of service) the member may no longer be able to perform the required work without risking the health and safety of the member, the public, or the member’s co-workers.”³⁸
- *Creating Inequities:* There are similarly situated employees who are not eligible for the Special Risk Class: a person who mixes and dispenses the pesticides while flying with the pilot, or drivers and pesticide applicators who dispense pesticides from ground transport vehicles.³⁹

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Governmental Operations Committee adopted an amendment and reported the bill favorably with a committee substitute. The amendment provided further definition and criteria for the mosquito control pilots who are included in the Special Risk Class.

³⁸ *Id.*

³⁹ *Id.*

HB 897

2006
CS

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida Retirement System; amending ss. 121.021 and 121.0515, F.S.; providing membership in the Special Risk Class for persons employed as pilots or aerial applicators authorized to provide mosquito control services; providing a definition; providing a declaration of important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (f) is added to subsection (15) of section 121.021, Florida Statutes, to read:

121.021 Definitions.--The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(15)

(f) Effective October 1, 2006, the term "special risk member" includes any member who is employed as a pilot or an aerial applicator by a municipality, county, special district,

HB 897

2006
CS

24 or state agency that is authorized to provide mosquito control
25 services under chapter 388 or by special act and who meets the
26 criteria set forth in s. 121.0515(2)(i).

27 Section 2. Subsection (2) of section 121.0515, Florida
28 Statutes, is amended to read:

29 121.0515 Special risk membership.--

30 (2) CRITERIA.--A member, to be designated as a special
31 risk member, must meet the following criteria:

32 (a) The member must be employed as a law enforcement
33 officer and be certified, or required to be certified, in
34 compliance with s. 943.1395; however, sheriffs and elected
35 police chiefs shall be excluded from meeting the certification
36 requirements of this paragraph. In addition, the member's duties
37 and responsibilities must include the pursuit, apprehension, and
38 arrest of law violators or suspected law violators; or the
39 member must be an active member of a bomb disposal unit whose
40 primary responsibility is the location, handling, and disposal
41 of explosive devices; or the member must be the supervisor or
42 command officer of a member or members who have such
43 responsibilities; provided, however, administrative support
44 personnel, including, but not limited to, those whose primary
45 duties and responsibilities are in accounting, purchasing,
46 legal, and personnel, shall not be included;

47 (b) The member must be employed as a firefighter and be
48 certified, or required to be certified, in compliance with s.
49 633.35 and be employed solely within the fire department of a
50 local government employer or an agency of state government with
51 firefighting responsibilities. In addition, the member's duties

HB 897

2006
CS

and responsibilities must include on-the-scene fighting of fires, fire prevention, or firefighter training; direct supervision of firefighting units, fire prevention, or firefighter training; or aerial firefighting surveillance performed by fixed-wing aircraft pilots employed by the Division of Forestry of the Department of Agriculture and Consumer Services; or the member must be the supervisor or command officer of a member or members who have such responsibilities; provided, however, administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, shall not be included and further provided that all periods of creditable service in fire prevention or firefighter training, or as the supervisor or command officer of a member or members who have such responsibilities, and for which the employer paid the special risk contribution rate, shall be included;

(c) The member must be employed as a correctional officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and responsibilities must be the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported; or the member must be the supervisor or command officer of a member or members who have such responsibilities; provided, however, administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in

HB 897

2006
CS

80 | accounting, purchasing, legal, and personnel, shall not be
81 | included; however, wardens and assistant wardens, as defined by
82 | rule, shall participate in the Special Risk Class;

83 | (d) The member must be employed by a licensed Advance Life
84 | Support (ALS) or Basic Life Support (BLS) employer as an
85 | emergency medical technician or a paramedic and be certified in
86 | compliance with s. 401.27. In addition, the member's primary
87 | duties and responsibilities must include on-the-scene emergency
88 | medical care or direct supervision of emergency medical
89 | technicians or paramedics, or the member must be the supervisor
90 | or command officer of one or more members who have such
91 | responsibility. However, administrative support personnel,
92 | including, but not limited to, those whose primary
93 | responsibilities are in accounting, purchasing, legal, and
94 | personnel, shall not be included;

95 | (e) The member must be employed as a community-based
96 | correctional probation officer and be certified, or required to
97 | be certified, in compliance with s. 943.1395. In addition, the
98 | member's primary duties and responsibilities must be the
99 | supervised custody, surveillance, control, investigation, and
100 | counseling of assigned inmates, probationers, parolees, or
101 | community controllees within the community; or the member must
102 | be the supervisor of a member or members who have such
103 | responsibilities. Administrative support personnel, including,
104 | but not limited to, those whose primary duties and
105 | responsibilities are in accounting, purchasing, legal services,
106 | and personnel management, shall not be included; however,

HB 897

2006
CS

probation and parole circuit and deputy circuit administrators shall participate in the Special Risk Class;

(f) The member must be employed in one of the following classes and must spend at least 75 percent of his or her time performing duties which involve contact with patients or inmates in a correctional or forensic facility or institution:

1. Dietitian (class codes 5203 and 5204);
2. Public health nutrition consultant (class code 5224);
3. Psychological specialist (class codes 5230 and 5231);
4. Psychologist (class code 5234);
5. Senior psychologist (class codes 5237 and 5238);
6. Regional mental health consultant (class code 5240);
7. Psychological Services Director--DCF (class code 5242);
8. Pharmacist (class codes 5245 and 5246);
9. Senior pharmacist (class codes 5248 and 5249);
10. Dentist (class code 5266);
11. Senior dentist (class code 5269);
12. Registered nurse (class codes 5290 and 5291);
13. Senior registered nurse (class codes 5292 and 5293);
14. Registered nurse specialist (class codes 5294 and 5295);
15. Clinical associate (class codes 5298 and 5299);
16. Advanced registered nurse practitioner (class codes 5297 and 5300);
17. Advanced registered nurse practitioner specialist (class codes 5304 and 5305);
18. Registered nurse supervisor (class codes 5306 and 5307);

HB 897

2006
CS

19. Senior registered nurse supervisor (class codes 5308 and 5309);

20. Registered nursing consultant (class codes 5312 and 5313);

21. Quality management program supervisor (class code 5314);

22. Executive nursing director (class codes 5320 and 5321);

23. Speech and hearing therapist (class code 5406); or

24. Pharmacy manager (class code 5251);

(g) The member must be employed as a youth custody officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and responsibilities must be the supervised custody, surveillance, control, investigation, apprehension, arrest, and counseling of assigned juveniles within the community; ~~or~~

(h) The member must be employed by a law enforcement agency or medical examiner's office in a forensic discipline recognized by the International Association for Identification and must qualify for active membership in the International Association for Identification. The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility. Administrative support personnel, including, but not limited to, those whose primary responsibilities are clerical or in

HB 897

2006
CS

accounting, purchasing, legal, and personnel, shall not be included; ~~or-~~

(i) The member must be employed as a pilot or an aerial applicator by a municipality, county, special district, or state agency that is authorized to provide mosquito control services under chapter 388 or by special act, must be licensed as a pilot by the Federal Aviation Administration, and must satisfy any licensure or certification requirements established by the Department of Agriculture and Consumer Services pursuant to s. 388.361(4). In addition, the member's primary duties and responsibilities must include piloting or copiloting, often at low altitudes, a rotary-wing or fixed-wing aircraft for chemical application of pesticides for controlling mosquitoes or other arthropods.

Section 3. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems. These persons must be provided benefits that are fair and adequate and that are managed, administered, and funded in a sound actuarial manner, as required by Section 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature hereby determines and declares that this act fulfills an important state interest.

Section 4. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1191 CS
SPONSOR(S): Legg and others
TIED BILLS:

Telecommunication Rates
IDEN./SIM. BILLS: SB 142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Utilities & Telecommunications Committee</u>	<u>16 Y, 0 N, w/CS</u>	<u>Cater</u>	<u>Holt</u>
2) <u>Local Government Council</u>	<u></u>	<u>Camechis</u>	<u>Hamby</u>
3) <u>Finance & Tax Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill addresses ex parte presentations by any person to Commissioners and staff of the Public Service Commission (PSC), price regulation of basic services provided by incumbent local exchange telecommunications companies (LECs), retail service quality requirements imposed on LECs, and regulatory treatment of LEC retail services.

Ex Parte Presentations. First, the bill requires the PSC to adopt rules regulating ex parte presentations in PSC proceedings and provides guidelines for establishing varying degrees of disclosure for three types of proceedings:

- o Exempt proceedings, in which ex parte presentations may be freely made;
- o Permit-but-disclose proceeding in which ex parte presentations are permissible but subject to certain disclosure requirements; and
- o Restricted proceedings, in which ex parte presentations are generally prohibited.

The bill also provides procedures for processing written ex parte presentations and memoranda of oral ex parte presentations and definitions of specific terms.

Price and Service Regulation. The bill allows LECs to either file price tariffs with the PSC, as is currently required, or publicly publish the terms, conditions, and rates for each of its nonbasic services. Further, the bill allows a LEC to set or change, on 1 day's notice rather than 15 day's notice, the rate for each nonbasic service.

In addition, the bill deletes a provision that allows basic local service provided by certain LECs to be subject to the same regulatory treatment as nonbasic services at the discretion of the LEC. Deletion of this provision limits the ability of certain LECs to increase rates for basic services after parity is achieved in the future. The bill also requires a LEC to petition the PSC for approval to reduce its retail service quality requirements to minimal requirements currently imposed on competitive providers.

Lastly, the bill allows certain LECs to petition the PSC for less stringent regulatory treatment of retail services at a level no greater than that currently imposed on competitive providers. In its petition, a LEC must show and the PSC must find that:

- o The reduction of regulatory oversight is in the public interest;
- o The level of competition faced by the LEC is sufficient and sustainable to allow competition to supplant regulation by the PSC; and
- o The LEC will reduce its intrastate switched network access rates to its local reciprocal interconnection rate upon PSC approval of its petition.

The PSC will incur indeterminate additional expenditures associated with adopting rules relating to ex parte communications and with publishing notices of ex parte communications received by commissioners and staff of the PSC; however, the PSC may experience lower administrative costs if LECs publicly publish nonbasic service rate increases rather than filing tariffs with the PSC.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1191b.LGC.doc
DATE: 4/17/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government -The bill requires the PSC to adopt rules governing ex parte communications in PSC proceedings and provides guidelines; reduces the authority of certain LECs to increase future rates for basic services; revises the process that LECs must follow in order to obtain the same regulatory treatment of services as competitive providers; and allows each LEC, at its option, to either file price tariffs with the PSC or to publicly publish the terms, conditions, and rates for each of its nonbasic services.

B. EFFECT OF PROPOSED CHANGES:

Background Information

Incumbent Local Exchange Companies ("LECs") are defined as telephone companies that were historically granted exclusive franchises to build, maintain, and provide local telephone service, and include any company certificated by the PSC to provide local exchange telecommunications service in this state on or before June 30, 1995. The following LECs currently provide service in Florida¹:

- ALLTEL Florida, Inc.
- BellSouth Telecommunications, Inc.
- Frontier Communications of the South, Inc.
- GTC, Inc. d/b/a GT Com
- ITS Telecommunications Systems, Inc.
- Northeast Florida Telephone Company d/b/a NEFCOM
- Quincy Telephone Company d/b/a TDS Telecom/Quincy Telephone
- Smart City Telecommunications LLC d/b/a Smart City Telecom
- Sprint-Florida, Incorporated
- Verizon Florida Inc.

According to staff of the PSC, the following three LECs have 1 million or more access service lines in Florida, but none of the LECs have reduced their intrastate switched network access charges to parity with interstate switched network access charges:

- BellSouth Telecommunications, Inc.
- Sprint-Florida, Incorporated
- Verizon Florida Inc.

A Competitive Local Exchange Telecommunications Company ("competitive provider") includes any company certificated by the PSC to provide local exchange telecommunications in this state on or after July 1, 1995. According to PSC records, there are currently 410 competitive carriers certificated in Florida.²

¹ PSC Website, <http://www.psc.state.fl.us/apps/utility/mcd/Display.aspx?numPerPage=50>, viewed on April 17, 2006.

² PSC Website, <http://www.psc.state.fl.us/apps/utility/mcd/Display.aspx?numPerPage=50>, viewed on April 17, 2006.

Ex Parte Communications

Current Situation

Black's Law Dictionary defines "ex parte communication" as a "communication between counsel and the court when opposing counsel is not present. Such communications are ordinarily prohibited."³ Section 350.042, F.S., addresses ex parte communications with commissioners of the Public Service Commission (PSC) but does not address ex parte communications with PSC staff. That section provides in part as follows:

(1) A commissioner should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a proceeding under s. 120.54 or s. 120.565, workshops, or internal affairs meetings. No individual shall discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days. The provisions of this subsection shall not apply to commission staff.

This section further prohibits ex parte communications with commissioners regarding the merits of a case with the exception of:

- Communications from individual residential customers representing only themselves;
- Rulemaking proceedings;
- Declaratory statement proceedings;
- Workshops; and
- Internal Affairs meetings.

Ex parte communications between PSC staff and parties to most cases in which hearings are required are governed by PSC Rule 25-22.033, F.A.C. The rule requires that all parties receive copies of any written communication and that reasonable notice be given to all parties of scheduled meetings and conference calls regarding the merits of a case. This rule does not apply to proposed agency action proceedings prior to the commission vote, rulemaking proceedings, declaratory statement proceedings, docket and undocketed audits, telephone service evaluations, water and wastewater staff assisted rate cases, non-rate case tariffs, and electric and gas safety inspections.

Effect of Proposed Changes

This bill amends s. 350.042(1), F.S., to provide an additional exception to the prohibition against ex parte communications with PSC commissioners. The bill exempts communications specifically allowed in s. 120.80(13)(d), F.S., of the Florida Administrative Procedure Act, and s. 364.017, F.S., which is created by this bill.

The bill creates s. 364.017, F.S., relating to ex parte communications. To ensure the fairness and integrity of its decisionmaking, the bill requires the PSC to adopt rules regulating ex parte presentations in PSC proceedings and provides guidelines for establishing varying degrees of disclosure for three types of proceedings:

1. Exempt proceedings, in which ex parte presentations may be freely made;
2. Permit-but-disclose proceeding in which ex parte presentations are permissible but subject to certain disclosure requirements; and
3. Restricted proceedings, in which ex parte presentations are generally prohibited.

Regardless of the type of proceeding, there must be a designated period of time prior to the date scheduled for a decision to be made when all presentations or correspondence to PSC decisionmaking staff are prohibited. The only exceptions to this requirement include those instances where the presentation is otherwise allowed by statute; the presentation relates to emergency situations involving public health, safety, or welfare; or the presentation involves classified security information.

If a person submits a written ex parte presentation that is not exempt, that person must submit two copies of the presentation to the commission clerk under separate cover no later than the next business day. If a person makes an oral ex parte presentation that is not exempt and that presents data or arguments not already reflected in written filings, the person must submit to the commission clerk an original and one copy of a memorandum summarizing the new data or arguments no later than the next business day. The memorandum must also be provided to the commissioners or PSC employees involved in the oral presentation. The memoranda must contain a summary of the substance of the presentation, not just a list of subjects discussed.

The commission clerk is required to place in the public record all written ex parte presentations and memoranda reflecting oral ex parte presentations. The clerk must issue public notice of all such submissions received, at least twice per week, for any permit-but-disclose proceeding.

The bill creates the following definitions for purposes of this section:

- “Decisionmaking personnel” means “any member, officer, or employee of the commission who is or may reasonably be expected to be involved in formulating a substantive recommendation or decision, rule, or order in a proceeding. Any person who has been made a party to a proceeding or who otherwise has been excluded from the decisionmaking process shall not be treated as a decisionmaker with respect to that proceeding, and any person designated as part of a separate trial staff shall not be considered a decisionmaking person in the designated proceeding.”
- “Ex parte presentation” means “any presentation that, if written, is not served on the parties of record to the proceeding or, if oral, is made without advance notice to the parties and without opportunity for the parties to be present.”
- “Presentation” means “a communication directed to the merits or outcome of a proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation directed to the merits or outcome of a proceeding. Excluded from this definition are inquiries concerning compliance with procedural requirements if the procedural matter is not an area of controversy in the proceeding, statements made by decisionmakers that are limited to providing publicly available information about pending proceedings, and inquiries relating solely to the status of a proceeding.”

Tariff Filings

Current Situation

Section 364.051(5)(a), F.S., requires each incumbent local exchange telecommunications company (LEC) to maintain tariffs with the PSC containing the terms, conditions, and rates for each of its nonbasic services, and allows LECs to set or change, on 15 days' notice, the rate for each of its nonbasic services.

Effect of Proposed Changes

This bill amends s. 364.051(5)(a), F.S., to allow LECs, in lieu of filing tariffs at the PSC, to publicly publish the terms, conditions, and rates of nonbasic services. The proposed change also allows LECs to set or change those rates on one day's notice rather than 15 days' notice.

Section 364.051(5)(b), F.S., provides the PSC with continuing regulatory oversight over nonbasic services to ensure the resolution of service complaints, prevent cross-subsidization of nonbasic service with revenues from basic service, and ensure that all providers are treated fairly. If LECs are not required to file price tariffs for nonbasic services with the PSC or to maintain past price lists that were publicly published, the PSC may have difficulty providing continued regulatory oversight of nonbasic services.

Rates for Basic and Nonbasic Services

Current Situation

Section 364.051(3), F.S., addresses rate increases for basic services provided by LECs, and allows a LEC to adjust, on 30 days' notice, its basic service revenues once in any 12-month period in an amount not to exceed the change in inflation less 1 percent. Section 364.051(6), F.S., currently allows a LEC that has more than 1 million access lines in Florida the option of having its basic services treated as nonbasic services once parity is achieved in the future. This means that, once parity is achieved, a LEC may decide to increase rates for basic services in the same manner that rates for nonbasic services are increased.

Section 364.051(5), F.S., addresses rate increases for nonbasic services, and provides that an increase in any nonbasic service category may not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area, at which time the price for any nonbasic service category may be increased in an amount not to exceed 20 percent within a 12-month period. Increases in nonbasic rates are presumptively valid.

Therefore, in the future, if a qualified LEC chooses to treat basic services the same as nonbasic services, rate increases for basic services may not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area, at which time the price for any nonbasic service category may be increased in an amount not to exceed 20 percent within a 12-month period. These increases in basic rates are also presumptively valid.

Effect of Proposed Changes

This bill amends s. 364.051(6), F.S., to delete the provision that allows LECs the option of treating basic services as nonbasic services. Therefore, after parity is reached, a LEC may adjust, on 30 days' notice, its basic service revenues once in any 12-month period in an amount not to exceed the change in inflation less 1 percent.

Retail Service Quality Requirements

Current Situation

Retail service quality requirements address such things as a company's response time to requests for new services and response times to reports of service interruptions. With respect to a LEC that has more than 1 million access lines in service that has achieved parity, s. 364.051(6), F.S., provides that basic services may, at the company's election, be subject to the same regulatory treatment as nonbasic services. The company's retail quality of service requirements will thereafter be no greater than those applicable to competitive providers, without prior approval of the PSC. However, the PSC may, within 120 days after election by the LEC, find that relaxation of service quality standards is not warranted in some or all markets served by the LEC. The PSC is authorized to allow relaxation of quality standards

in some or all markets. The PSC may not impose service quality requirements for competitive providers greater than those in effect on January 1, 2003.

Effect of Proposed Changes

The bill amends s. 364.051(6), F.S., to provide that after a LEC with 1 million or more access lines in Florida achieves parity, the LEC's retail service quality requirements that are not already equal to the requirements imposed on competitive carriers will, upon the LEC's request to the PSC, be no greater than those imposed upon competitive carriers unless the PSC, within 120 days after the LEC submits its request, determines otherwise.

Regulatory Treatment of Retail Services

Current Situation

Section 364.051(7), F.S., provides that if a LEC with more than 1 million access lines in Florida achieves parity and has elected to have its basic services treated as nonbasic services, the LEC may, at that time or thereafter, petition the PSC for regulatory treatment of its retail services at a level no greater than that currently imposed on competitive providers. In order to receive reduced regulatory treatment, the LEC must:

- Demonstrate that a reduction of regulatory oversight is in the public interest; and
- Reduce its intrastate switched network access rates to a level equal to that of its intercarrier compensation rates upon PSC approval of its petition.

The PSC must act on the petition within nine months and, in its consideration of the petition, determine the extent to which the level of competition faced by the LEC permits, and will continue to permit, the regulatory treatment of LEC retail service regulated on the same basis as those of competitive providers. The PSC is prohibited from increasing the level of regulation on retail services offered by competitive providers beyond that which is in effect on the date of the LEC petition.

Section 364.337, F.S., provides for minimal regulation of competitive carriers, requiring certification by the PSC and providing for basic local telecommunications standards. Section 364.337(5), F.S., provides the PSC with continuing regulatory oversight of the provision of basic local exchange telecommunications service provided by competitive providers for the sole purposes of establishing reasonable service quality criteria, assuring resolution of service complaints, and ensuring the fair treatment of all telecommunications providers in the telecommunications marketplace.

Effect of Proposed Changes

This bill continues to allow a LEC with more than 1 million access lines that has achieved parity to petition the PSC for minimal regulatory treatment of its retail services at a level no greater than that currently imposed on competitive providers, but amends s. 364.051(7), F.S., to require the LEC to show and the PSC to find that:

- A reduction of regulatory oversight is in the public interest;
- *The level of competition faced by the LEC is sufficient and sustainable to allow competition to supplant regulation by the PSC; and*
- The LEC will reduce its intrastate switched network access rates to a level equal to that of its intercarrier compensation rates upon PSC approval of the petition.

The second bullet above is a new requirement created by this bill. The bill deletes the provision requiring the PSC to determine the extent to which the level of competition faced by a LEC permits and will continue to permit the company to have its retail services regulated differently than its competitors.

C. SECTION DIRECTORY:

- Section 1. Amends s. 350.042, F.S., specifying provisions for ex parte communications procedures.
- Section 2. Creates s. 364.017, F.S., providing for ex parte communications relating to PSC proceedings; directing the PSC to adopt rules to regulate such communications.
- Section 3. Amends s. 364.051, F.S., relating to price regulation; allowing certain local exchange telecommunications companies to publish terms, conditions, and rates for nonbasic services in lieu of maintaining tariffs with the PSC; revising the notice requirement for price changes to nonbasic services; removing a provision that allows a company to elect that its basic services be subject to the same regulatory treatment as its nonbasic services; providing for a request from a company to the PSC to make certain reductions in its retail service quality requirements; revising criteria for granting a petition to change regulatory treatment of retail services.
- Section 4. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None
2. Expenditures: The PSC will incur indeterminate additional expenditures associated with adopting rules relating to ex parte communications and with publishing notices of ex parte communications received by commissioners and staff of the PSC; however, the PSC may experience lower administrative costs if LECs publicly publish nonbasic service rate increases rather than filing tariffs with the PSC. In addition, costs of providing regulatory oversight of LECs may be reduced in the future if the PSC grants LEC petitions for reductions in current regulatory treatment of retail services.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None
2. Expenditures: None

- C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The LECs may experience a reduction in costs if a LEC publicly publishes price lists for nonbasic services rather than filing price tariffs with the PSC. In addition, LECs may experience an economic benefit if the PSC grants petitions for reductions of regulatory oversight in the future. Consumers potentially benefit from the reduction in authority of LECs to increase future rates for basic services, assuming the qualified LECs would have increased future rates in excess of the change in inflation less 1 percent.

- D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not appear to affect municipal or county government.

2. Other: None

B. **RULE-MAKING AUTHORITY:** The bill requires the PSC to adopt rules regulating ex parte communications in PSC proceeding.

C. **DRAFTING ISSUES OR OTHER COMMENTS:** The bill amends s. 364.051(5)(a), F.S., to allow a LEC to publicly publish, in lieu of filing tariffs at the PSC, the terms, conditions, and rates of nonbasic services and allows LECs to set or change those rates on one day's notice. However s. 364.051(5)(b), F.S., provides the PSC with continuing regulatory oversight of nonbasic services to ensure the resolution of service complaints, prevent cross-subsidization of nonbasic service with revenues from basic service, and ensure that all providers are treated fairly. If the LECs are not required to file their prices for nonbasic services with the PSC or maintain price lists after a change in prices, the PSC may have difficulty performing its oversight function.

The current PSC statute relating to ex parte communications is located in s. 350.042, F.S., while the bill's provisions for ex parte communications are contained in s. 364.017, F.S.,. While ch. 350, F.S., governs the Public Service Commission generally, ch. 364, F.S., governs the regulation of telecommunications companies. Since the new ex parte communications provisions are created in ch. 364, F.S., these provisions may be construed to only apply to proceeding involving telecommunications companies, and not apply to proceeding involving electric, natural gas, water, or wastewater companies, which are also regulated by the PSC.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Utilities & Telecommunications Committee adopted a strike-all amendment to the bill. The strike-all amendment eliminated the language repealing the rate rebalancing provisions of the Tele-competition Innovation and Infrastructure Enhancement Act of 2003, and replaced it with new provisions. These new provisions:

- Establish guidelines regarding ex parte presentations at the PSC which:
 - Requires the PSC to establish rules;
 - Provides guidelines for public disclosure of ex parte communications; and
 - Provides definitions.
- Delete a provision allowing a LEC to elect to have its basic service treated as nonbasic service.
- Require a LEC to request from the PSC to have its service quality requirements treated the same as competitive companies.
- Allow the LEC to petition the PSC after parity is reached, for lesser regulatory treatment of its retail services. The petition must show and the PSC must find:
 - The change would be in the public interest.
 - The level of competition has been demonstrated to be sufficient and sustainable to allow regulation be supplanted by competitive forces.
 - The company has reduced its intrastate switched network access rates to its local reciprocal interconnect rate once the petition is granted.
- Allow the LEC to changes its prices for nonbasic services on only one day's notice and to publicly publish its pricelists rather than file tariffs with the PSC.

HB 1191

2006
CS

CHAMBER ACTION

The Utilities & Telecommunications Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to telecommunications service regulation; amending s. 350.042, F.S.; specifying provisions for ex parte communications procedures; creating s. 364.017, F.S.; providing for ex parte communications relating to Public Service Commission proceedings; directing the commission to adopt rules to regulate such communications; amending s. 364.051, F.S., relating to price regulation; allowing certain local exchange telecommunications companies to publish terms, conditions, and rates for nonbasic services in lieu of maintaining tariffs with the Public Service Commission; revising the notice requirement for price changes to nonbasic services; removing a provision that allows a company to elect that its basic services be subject to the same regulatory treatment as its nonbasic services; providing for a request from a company to the Public Service Commission to make certain reductions in its retail service quality requirements;

HB 1191

2006
CS

revising criteria for granting a petition to change
regulatory treatment of retail services; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 350.042, Florida
Statutes, is amended to read:

350.042 Ex parte communications.--

(1) A commissioner should accord to every person who is
legally interested in a proceeding, or the person's lawyer, full
right to be heard according to law, and, except as otherwise
authorized by law, or specifically allowed in ss. 120.80(13)(d)
and 364.017, a commissioner shall neither initiate nor consider
ex parte communications concerning the merits, threat, or offer
of reward in any proceeding other than a proceeding under s.
120.54 or s. 120.565, workshops, or internal affairs meetings.
No individual shall discuss ex parte with a commissioner the
merits of any issue that he or she knows will be filed with the
commission within 90 days. The provisions of this subsection
shall not apply to commission staff.

Section 2. Section 364.017, Florida Statutes, is created
to read:

364.017 Ex parte communications.--

(1) To ensure the fairness and integrity of its
decisionmaking, the commission shall prescribe rules to regulate
ex parte presentations in commission proceedings. The rules
shall specify exempt proceedings in which ex parte presentations

HB 1191

2006
CS

52 may be made freely; permit-but-disclose proceedings in which ex
53 parte presentations to commission decisionmaking personnel are
54 permissible but subject to certain disclosure requirements; and
55 restricted proceedings in which ex parte presentations to and
56 from commission decisionmaking personnel are generally
57 prohibited.

58 (2) In all proceedings, there shall be designated a period
59 of time prior to the date established for making a decision
60 during which all presentations or correspondence to commission
61 decisionmaking staff are prohibited. Exceptions to this
62 requirement shall be any presentation or correspondence
63 otherwise allowed by statute; any presentation that relates to
64 emergency situations involving public health, safety, and
65 welfare; and any presentation involving classified security
66 information.

67 (3) A person who makes a written ex parte presentation
68 subject to this section shall, no later than the next business
69 day after the presentation, submit two copies of the
70 presentation to the commission's clerk under separate cover for
71 inclusion in the public record. The presentation and cover
72 letter shall clearly identify the proceeding to which it
73 relates, including the docket number, if any; shall indicate
74 that two copies have been submitted to the clerk; and must be
75 labeled as an ex parte presentation. A person who makes an oral
76 ex parte presentation subject to this section that presents data
77 or arguments not already reflected in that person's written
78 comments, memoranda, or other filings in that proceeding shall,
79 no later than the next business day after the presentation,

HB 1191

2006
CS

80 submit to the commission's clerk an original and one copy of a
81 memorandum which summarizes the new data or arguments. A copy of
82 the memorandum must also be submitted to the commissioners or
83 commission employees involved in the oral presentation. Any such
84 memoranda must contain a summary of the substance of the ex
85 parte presentation and not merely a listing of the subjects
86 discussed.

87 (4) The commission's clerk shall place in the public file
88 or record of the proceeding written ex parte presentations and
89 memoranda reflecting oral ex parte presentations. The clerk
90 shall issue a public notice listing any written ex parte
91 presentations or written summaries of oral ex parte
92 presentations received by his or her office relating to any
93 permit-but-disclose proceeding. Such public notices should
94 generally be released at least twice per week.

95 (5) For purposes of this section, the following
96 definitions shall apply:

97 (a) "Decisionmaking personnel" means any member, officer,
98 or employee of the commission who is or may reasonably be
99 expected to be involved in formulating a substantive
100 recommendation or decision, rule, or order in a proceeding. Any
101 person who has been made a party to a proceeding or who
102 otherwise has been excluded from the decisionmaking process
103 shall not be treated as a decisionmaker with respect to that
104 proceeding, and any person designated as part of a separate
105 trial staff shall not be considered a decisionmaking person in
106 the designated proceeding.

HB 1191

2006
CS

(b) "Ex parte presentation" means any presentation that, if written, is not served on the parties of record to the proceeding or, if oral, is made without advance notice to the parties and without opportunity for the parties to be present.

(c) "Presentation" means a communication directed to the merits or outcome of a proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation directed to the merits or outcome of a proceeding. Excluded from this definition are inquiries concerning compliance with procedural requirements if the procedural matter is not an area of controversy in the proceeding, statements made by decisionmakers that are limited to providing publicly available information about pending proceedings, and inquiries relating solely to the status of a proceeding.

Section 3. Subsections (5), (6), and (7) of section 364.051, Florida Statutes, are amended to read:

364.051 Price regulation.--

(5) NONBASIC SERVICES.--Price regulation of nonbasic services shall consist of the following:

(a) Each company subject to this section shall, at its option, maintain tariffs with the commission or otherwise publicly publish ~~containing~~ the terms, conditions, and rates for each of its nonbasic services, and may set or change, on 1 day's ~~15 days~~ notice, the rate for each of its nonbasic services, except that a price increase for any nonbasic service category shall not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service

HB 1191

2006
CS

135 in an exchange area at which time the price for any nonbasic
136 service category may be increased in an amount not to exceed 20
137 percent within a 12-month period, and the rate shall be
138 presumptively valid. However, for purposes of this subsection,
139 the prices of:

140 1. A voice-grade, flat-rate, multi-line business local
141 exchange service, including multiple individual lines, centrex
142 lines, private branch exchange trunks, and any associated
143 hunting services, that provides dial tone and local usage
144 necessary to place a call within a local exchange calling area;
145 and

146 2. Telecommunications services provided under contract
147 service arrangements to the SUNCOM Network, as defined in
148 chapter 282,

149
150 shall be capped at the rates in effect on July 1, 1995, and such
151 rates shall not be increased prior to January 1, 2000; provided,
152 however, that a petition to increase such rates may be filed
153 pursuant to subsection (4) utilizing the standards set forth
154 therein. There shall be a flat-rate pricing option for multi-
155 line business local exchange service, and mandatory measured
156 service for multi-line business local exchange service shall not
157 be imposed. Nothing contained in this section shall prevent the
158 local exchange telecommunications company from meeting offerings
159 by any competitive provider of the same, or functionally
160 equivalent, nonbasic services in a specific geographic market or
161 to a specific customer by deaveraging the price of any nonbasic
162 service, packaging nonbasic services together or with basic

HB 1191

2006
CS

163 services, using volume discounts and term discounts, and
164 offering individual contracts. However, the local exchange
165 telecommunications company shall not engage in any
166 anticompetitive act or practice, nor unreasonably discriminate
167 among similarly situated customers.

168 (b) The commission shall have continuing regulatory
169 oversight of nonbasic services for purposes of ensuring
170 resolution of service complaints, preventing cross-subsidization
171 of nonbasic services with revenues from basic services, and
172 ensuring that all providers are treated fairly in the
173 telecommunications market. The cost standard for determining
174 cross-subsidization is whether the total revenue from a nonbasic
175 service is less than the total long-run incremental cost of the
176 service. Total long-run incremental cost means service-specific
177 volume and nonvolume-sensitive costs.

178 (c) The price charged to a consumer for a nonbasic service
179 shall cover the direct costs of providing the service and shall,
180 to the extent a cost is not included in the direct cost, include
181 as an imputed cost the price charged by the company to
182 competitors for any monopoly component used by a competitor in
183 the provision of its same or functionally equivalent service.

184 (6) After a local exchange telecommunications company that
185 has more than 1 million access lines in service has reduced its
186 intrastate switched network access rates to parity, as defined
187 in s. 364.164(5), the local exchange telecommunications
188 company's ~~basic local telecommunications service may, at the~~
189 ~~company's election, be subject to the same regulatory treatment~~
190 ~~as its nonbasic services. The company's retail service quality~~

HB 1191

2006
CS

191 requirements that are not already equal to the service quality
192 requirements imposed upon the competitive local exchange
193 telecommunications companies shall at the company's request to
194 the commission ~~thereafter~~ be no greater than those imposed upon
195 competitive local exchange telecommunications companies unless
196 the commission, within 120 days after the company's request
197 ~~election~~, determines otherwise. In such event, the commission
198 may grant some reductions in service quality requirements in
199 some or all of the company's local calling areas. The commission
200 may not impose retail service quality requirements on
201 competitive local exchange telecommunications companies greater
202 than those existing on January 1, 2003.

203 (7) After ~~If~~ a local exchange telecommunications company
204 that has more than 1 million access lines in service has reduced
205 its intrastate switched network access rates to parity, as
206 defined in s. 364.164(5) elects, pursuant to subsection (6), to
207 ~~subject its retail basic local telecommunications services to~~
208 ~~the same regulatory treatment as its nonbasic services, the~~
209 local exchange telecommunications company may petition the
210 commission for regulatory treatment of its retail services at a
211 level no greater than that imposed by the commission upon
212 competitive local exchange telecommunications companies. The
213 local exchange telecommunications company shall:

214 (a) Show that granting the petition is in the public
215 interest;

216 (b) Demonstrate that the competition faced by the company
217 is sufficient and sustainable to allow such competition to
218 supplant regulation by the commission; and

HB 1191

2006
CS

219 (c)~~(b)~~ Reduce its intrastate switched network access rates
220 to its local reciprocal interconnection rate upon the grant of
221 the petition.

222
223 The commission shall act upon such a petition within 9 months
224 after its filing with the commission. ~~In making its~~
225 ~~determination to either grant or deny the petition, the~~
226 ~~commission shall determine the extent to which the level of~~
227 ~~competition faced by the local exchange telecommunications~~
228 ~~company permits and will continue to permit the company to have~~
229 ~~its retail services regulated no differently than the~~
230 ~~competitive local exchange telecommunications companies are then~~
231 ~~being regulated.~~ The commission may not increase the level of
232 regulation for competitive local exchange telecommunications
233 companies to a level greater than that which exists on the date
234 the local exchange telecommunications company files its
235 petition.

236 Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1447 CS

Licensing

SPONSOR(S): Reagan

TIED BILLS:

IDEN./SIM. BILLS: SB 1112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Mitchell</u>	<u>Williamson</u>
2) <u>Local Government Council</u>	<u></u>	<u>DiVagno</u> <i>RD</i>	<u>Hamby</u> <i>zab</i>
3) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill amends the definition of license under the Administrative Procedure Act to include "building permits." The bill also requires the written notice an agency is required to give an applicant when they intend to grant or deny, or has granted or denied, an application for licensure to include the citations to the applicable rule, statute, or both for which issuance or denial is based on.

The bill requires counties and municipalities to give written notice to an applicant when denying an application for a development permit. This written notice must also state the grounds or basis for the denial, with citation to the applicable ordinance or other legal authority.

This bill may impact the existing caselaw on written findings for certain types of land use decisions.

This bill does not appear to create, modify, or eliminate rulemaking authority.

This bill would take effect upon becoming law.

There does not appear to be a fiscal impact on state or local government revenues. State agencies, counties, and municipalities may need to update their applicable rules, ordinances, or processes to comply with this bill. The parameters of the required written notice, however, will ultimately determine the level of local government expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases the information provided to applicants when granted or denied a license by the state, counties, and municipalities.

B. EFFECT OF PROPOSED CHANGES:

This bill affects licensing under the Administrative Procedure Act and the denial of development permits by counties and municipalities.

“Licensing” under the Administrative Procedure Act

Chapter 120, Florida Statutes, is the Administrative Procedure Act (APA). The APA applies to “agencies.” The term “agencies” includes the Governor,¹ state officers, state departments, departmental units,² authorities, regional water supply authorities, boards, commissions,³ regional planning agencies, educational units, and other specified entities.⁴

The APA defines the term “license” to include: a franchise, permit, certification, registration, charter, or similar form of authorization required by law.⁵ This definition, however, excludes any license that is issued primarily for revenue purposes when issuance of the license is merely a ministerial act.⁶ The APA has provisions which specifically relate to licensing and place certain requirements on agencies:

- Examine any application for a license upon receipt, notify the applicant of any apparent errors or omissions within 30 days, and request any additional information the agency required by law;⁷
- Consider an application complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired;⁸
- Approve or deny every application for a license within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law;⁹

¹ Fla. Stat. § 120.52(1)(a) (2005) (while the Governor is exercising all executive powers other than those derived from the Florida Constitution).

² Fla. Stat. § 120.52(1)(b)1. (2005) (as described in section 20.04, Florida Statutes).

³ Fla. Stat. § 120.52(1)(b)4. (2005) (including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature).

⁴ Fla. Stat. § 120.52(1)(b)8. (2005) (This includes entities described in chapters 163 [Intergovernmental Programs], 373 [Water Resources], 380 [Land and Water Management], and 582 [Soil and Water Conservation Districts], Florida Statutes, and section 186.504 [Regional Planning Councils], Florida Statutes. Agency does not include legal entities created pursuant to part II of chapter 361 [Joint Electric Power Supply Projects], Florida Statutes, metropolitan planning organizations, separate legal or administrative entities which include metropolitan planning organizations, expressway authorities, legal or administrative entities created pursuant to an interlocal agreement unless a party is otherwise subject to the APA.).

⁵ Fla. Stat. § 120.52(9) (2005).

⁶ Fla. Stat. § 120.52(9) (2005).

⁷ Fla. Stat. § 120.60(1) (2005) (An agency is prohibited from denying a license for failure to correct an error or omission to supply additional information if the agency does not notify the applicant of any errors or omissions and request additional information).

⁸ Fla. Stat. § 120.60(1) (2005) (An agency is prohibited from denying a license for failure to correct an error or omission to supply additional information if the agency does not notify the applicant of any errors or omissions and request additional information).

⁹ Fla. Stat. § 120.60(1) (2005) (Any application for a license that is not approved or denied within the 90-day or other shorter time period required by law, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license.).

- Notify any applicant seeking a license for an activity that is exempt from licensure and return any application fee within 30 days after receipt of the original application; and¹⁰
- Provide written notice, either personally or by mail, that the agency intends to grant or deny an application for license and state with particularity the grounds or basis for the issuance or denial of the license.¹¹

The licensing provisions of the APA also apply to licenses which do not automatically expire by statute,¹² the revocation, suspension, annulment, or withdrawal of licenses; and emergency suspensions, restrictions, or limitations of a license.

Changes to Licensing Under the APA

This bill amends the definition of license to include “building permits.”¹³ This bill also creates a new requirement for the written notice that agencies are required to give applicants when the agency intends to grant or deny, or has granted or denied, an application for licensure. In addition to stating with particularity the grounds or basis for the issuance or denial of a license, the bill requires the written notice to also include a citation to the applicable rule, statute, or both if applicable.

Licensing by Counties and Municipalities

The APA applies to certain local government entities such as multicounty special districts with a majority of its governing board comprised of nonelected persons.¹⁴ The APA also applies to counties and municipalities to the extent they are *expressly* made subject to the APA by general or special law or existing judicial decisions.¹⁵ Most licensing decisions of counties and municipalities have not, however, been made subject to the APA. As such, most licensing by counties and municipalities, including development permits, is controlled by ordinances, judicial decisions, and other applicable statutes.¹⁶

Development Permits by Counties and Municipalities

In general, a development permit is any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.¹⁷ The authority to issue development permits is part of the “home rule” power of charter counties¹⁸ and municipalities.¹⁹ It is also, for non-charter counties in particular, an essential component of the authority to prepare, implement, and enforce comprehensive plans as well as the authority to establish, coordinate, implement, and enforce zoning ordinances.²⁰

There is, however, an important judicial distinction between establishing a comprehensive plan or zoning ordinance, and its implementation through the development permit process. Establishing a comprehensive plan or zoning ordinance is the formulation of a general rule of policy and is a

¹⁰ Fla. Stat. § 120.60(2) (2005).

¹¹ Fla. Stat. § 120.60(2) (2005) (This notice must further inform the applicant of the basis for the agency decision, of any administrative hearing or judicial review which may be available, of the procedure which must be followed, and of any applicable time limits.).

¹² Fla. Stat. § 120.60(3) (2005).

¹³ See *infra* Drafting Issues and Other Comments, “Expanded Definition of License.”

¹⁴ Fla. Stat. § 120.52(1) (2005).

¹⁵ Fla. Stat. § 120.52(1)(c) (2005).

¹⁶ See, e.g., Fla. Stat. § 553.792 (2005) (providing response timeframes for local governments for certain building permit applications).

¹⁷ See, e.g., Fla. Stat. §§ 163.3164(8) and 163.3221(5) (2005).

¹⁸ Fla. Const. art. VIII, § 1(g) (Counties operating under charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.).

¹⁹ Fla. Const. art. VIII, § 2(b) (Municipalities shall have governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as provided by law.).

²⁰ See, e.g., Fla. Stat. § 125.01(g) and (h) (2005).

legislative action.²¹ The decision to grant or deny development permits in implementing the comprehensive plan or zoning ordinance generally is the application of a general rule of policy and is a "judicial" or quasi-judicial action.²²

The distinction between legislative and quasi-judicial action determines the type of review or deference that courts will give the action. Legislative actions, for example, will be sustained as long as they are fairly debatable.²³ Quasi-judicial actions, by contrast, are subject to review as to whether there was strict compliance with the comprehensive plan or zoning ordinance.²⁴

Quasi-judicial Actions

Quasi-judicial action on most development permits is unique in that it is one of three types of actions that qualify for an extraordinary review by a court known as the common law writ of certiorari.²⁵ In the first tier of certiorari review, the circuit court reviews *the record* to determine whether the decision was supported by competent and substantial evidence.²⁶ The Florida Supreme Court has declined to require *findings of fact* by local governments as part of this quasi-judicial record.²⁷ Yet, the Florida Supreme Court noted that this decision has been called into question and directed the Rules of Judicial Administration Committee of the Florida Bar to study whether to require written final decisions with detailed findings of fact in local land use actions that are subject to review in the courts.²⁸ The Rules of Judicial Administration Committee ultimately recommended that the Florida Supreme Court not adopt such a rule because it violates the separation of powers between the judicial and executive branches.²⁹

Findings of Fact Arguments

To assist the Rules of Judicial Administration Committee in its deliberations, an ad hoc committee of the Environmental and Land Use Law Section of the Florida Bar provided a memorandum which recommended against the adoption of such a rule because it would encroach upon the authority of the legislative branch; that is, the Florida Constitution grants authority over local governments to the legislative branch and local governments are not "courts" for purposes of adopting rules for procedure and practice as required by article V, section 2(a) of the Florida Constitution.³⁰ The ad hoc committee was divided as to whether the court should require written final decisions with detailed findings of fact as a matter of constitutional due process of law.³¹ The ad hoc committee presented both of these perspectives.

Among the arguments presented in support of due process requiring written findings in quasi-judicial decisions: enables the proper certiorari review and ensures rationality; serves as both the starting point and guideposts for the circuit court's review; exposes "decisional referents;" reverses the radical

²¹ See, e.g., *Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).

²² See, e.g., *Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).

²³ See, e.g., *Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).

²⁴ See, e.g., *Board of County Comm'rs v. Snyder*, 627 So.2d 469, 474 (Fla. 1993).

²⁵ *Broward County v. G.B.V. Int'l, Ltd.*, 787 So.2d 838, 842 ("The common law writ of certiorari is a special mechanism whereby an upper court can direct a lower tribunal to send up the record of a pending case so that the upper court can 'be informed of' events below and evaluate the proceedings for regularity. The writ functions as a safety net and gives the upper court the prerogative to reach down and halt a miscarriage of justice where no other remedy exists. The writ is discretionary and was intended to fill the interstices between direct appeal and the other prerogative writs. The writ never was intended to redress mere legal error, for common law certiorari--above all--is an extraordinary remedy, not a second appeal." The court further noted this type of action is not subject to review under the APA and that legislative actions are not reviewable via certiorari).

²⁶ *Broward County v. G.B.V. Int'l, Ltd.*, 787 So.2d 838, at 845 (Fla. 2001); see also *id.* at 843 (If further certiorari review is granted, the district court of appeal reviews the circuit court's judgment to determine whether the circuit court afforded procedural due process and applied the correct law).

²⁷ *Board of County Comm'rs v. Snyder*, 627 So.2d 469, 476 (Fla. 1993).

²⁸ *Broward County v. G.B.V. Int'l, Ltd.*, 787 So.2d 838, 846 (Fla. 2001).

²⁹ Letter from the Chair, Rules of Judicial Admin. Committee, Fla. Bar, to the Clerk of Court, Fla. Supreme Court (Jan. 18, 2002).

³⁰ Ad Hoc Committee on Broward v. G.B.V; Envtl. and Land Use Law Section of the Fla. Bar, Memorandum on the Question Referred by the Supreme Court in *Broward County v. G.B.V Int'l, Inc.* (Nov. 29, 2001).

³¹ Ad Hoc Committee on Broward v. G.B.V; Envtl. and Land Use Law Section of the Fla. Bar, Memorandum on the Question Referred by the Supreme Court in *Broward County v. G.B.V Int'l, Inc.* (Nov. 29, 2001).

alteration in the review of quasi-judicial decisions; returns a fundamental aspect of judicial review which no data suggest was an undue burden to communities; and benefits identifiably affected parties.³²

Among the arguments presented against due process requiring written findings in quasi-judicial decisions: limits local discretion to choose from a range of legally permissible options; interferes with the ability of local officials to represent their constituents; does not necessarily improve the quality of decision-making; unnecessarily complicates circuit court review; and increases the likelihood of violating separation of powers.³³

These arguments serve as background for requiring written findings and have implications for any other type of written notice.

Written Notice of Denial

This bill does not require written findings, but does require written notice stating the grounds or basis for the denial of the permit, with citation to the applicable ordinance or other legal authority to the applicant when a county or municipality denies an application for a development permit.

C. SECTION DIRECTORY:

- Section 1: Amends subsection (9) of section 120.52, Florida Statutes, to expand the definition of license.
- Section 2: Amends subsection (3) of section 120.60, Florida Statutes, to require a citation to the applicable rule when giving notice of its decision to deny or issue a license.
- Section 3: Creating section 125.022, Florida Statutes, to require a county to give written notice when it denies an application for a development permit and to set forth requirements for the written notice.
- Section 4: Creating section 166.033, Florida Statutes, to require a municipality to require a county to give written notice when it denies an application for a development permit and to set forth requirements for the written notice.
- Section 5: Providing for the bill to take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

State agencies may need to update their rules and processes to comply with this bill. These costs are indeterminate, but are not expected to be significant.

³² Ad Hoc Committee on Broward v. G.B.V; Env'tl. and Land Use Law Section of the Fla. Bar, Memorandum on the Question Referred by the Supreme Court in Broward County v. G.B.V Int'l, Inc. (Nov. 29, 2001) (citing Thomas G. Pelham, *Rezoning: A Commentary on the Snyder Decision and the Consistency Requirement*, 9 J. Land Use & Env'tl. L. 243 and T.R. Hainline & Steven Diebenow, *Snyder House Rules? The New Deference in the Review of Quasi-Judicial Decisions*, 74 Fla. B. J. 53 (Nov. 2000)).

³³ Ad Hoc Committee on Broward v. G.B.V; Env'tl. and Land Use Law Section of the Fla. Bar, Memorandum on the Question Referred by the Supreme Court in Broward County v. G.B.V Int'l, Inc. (Nov. 29, 2001).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

Counties and municipalities may need to update their ordinances and processes to comply with this bill. The parameters of the required written notice, however, will ultimately determine the level of local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue. Although this bill is expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds, these expenditures do not appear to be significant enough to trigger the constitutional provisions related to the mandated expenditure of funds.³⁴

2. Other:

There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority. Yet, the bill will likely require agencies to revise their current rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Definition of Development Permit

"Development permit" does not appear to be defined in chapters 125 or 166, Florida Statutes. The sponsor may wish to add an amendment to provide a definition or reference a definition elsewhere in the statutes.³⁵

³⁴ Section 18 of article VII of the Florida Constitution provides that counties and municipalities may not be bound by a general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds unless it fulfills an important state interest and one of five criteria is met: (1) funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; (3) the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

³⁵ See, e.g., Fla. Stat. §§ 70.51(2)(b), 163.3164(8), 163.3221(5), 288.109(3), and 380.031(4) (2005).

Expanded Definition of License

The expanded definition of license to include "building permit" raises several issues which the sponsor may wish to consider.

First, "building permit" should be included in the existing term "permit." If the Legislature starts adding specific types of permits, it may lead a court to conclude that the word permit is narrower than it currently appears.

Second, the definitions in section 120.52, Florida Statutes, only apply to counties and municipalities to the extent they are expressly made subject to it by law or by existing judicial decision. It is not clear that issuing building permits is expressly subject to chapter 120, Florida Statutes. It also is not clear if this addition could or would be sufficient to make issuing building permits subject to chapter 120, Florida Statutes. If it is not intended to make issuing building permits subject to chapter 120, Florida Statutes, then the relevance of the addition is not clear because the "agencies" in chapter 120, Florida Statutes, generally do not issue "building permits."

Finally, the use of "building permit" is different than "development permit," which is the term used in other parts of the bill.

Written Notice versus Written Findings

The bill requires and sets forth requirements for the written notice. It is not clear, however, how this written notice comports with the current caselaw on written findings. The Senate version of the bill currently contains a provision which sets forth the requirements of the written notice when the denial is the result of a quasi-judicial proceeding, specifying the notice is not required to contain findings of fact or conclusions of law. The sponsor may wish to consider a similar provision or otherwise clarify the relationship between written notices and written findings.

Timing of Written Notice

The bill does not currently specify *when* the written notice must be given to the applicant. It also is not clear what effect, if any, this written notice has on the timing of any applicable appellate rights. The sponsor may wish to further address these issues.

Results of Noncompliance by Local Governments

The bill does not currently provide any penalty for non-compliance. As such, it is unknown whether the remedy for failure by a county or municipality to provide the required notice results in approval or only serves to stay the denial until the requirements are met. The sponsor may wish to add procedures similar to those in section 120.60, Florida Statutes, which provide additional detail related to non-compliance for certain requirements.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Governmental Operations Committee adopted a substitute amendment that revised the definition of "license," further detailed the requirements of the written notice for state "agencies," and limited the scope and applicability of the required written notice for counties and municipalities to denial of an application for a development permit.

HB 1447

2006
CS

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the issuance of licenses and development permits; amending s. 120.52, F.S.; revising the definition of "license"; amending s. 120.60, F.S.; requiring that a state agency include a citation to the applicable rule or statute when giving notice of the decision to issue or deny a license; creating s. 125.022, F.S.; requiring a county to give written notice of the decision to deny a development permit; requiring that the notice include a citation to the applicable ordinance; creating s. 166.033, F.S.; requiring a municipality to give written notice of the decision to deny a development permit; requiring that the notice include a citation to the applicable ordinance; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (9) of section 120.52, Florida Statutes, is amended to read:

HB 1447

2006
CS

120.52 Definitions.--As used in this act:

(9) "License" means a franchise, permit, building permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

Section 2. Subsection (3) of section 120.60, Florida Statutes, is amended to read:

120.60 Licensing.--

(3) Each applicant shall be given written notice either personally or by mail that the agency intends to grant or deny, or has granted or denied, the application for license. The notice must state with particularity the grounds or basis, including a citation to the applicable rule, statute, or both, if applicable, for the issuance or denial of the license, except when issuance is a ministerial act. Unless waived, a copy of the notice shall be delivered or mailed to each party's attorney of record and to each person who has requested notice of agency action. Each notice shall inform the recipient of the basis for the agency decision, shall inform the recipient of any administrative hearing pursuant to ss. 120.569 and 120.57 or judicial review pursuant to s. 120.68 which may be available, shall indicate the procedure which must be followed, and shall state the applicable time limits. The issuing agency shall certify the date the notice was mailed or delivered, and the notice and the certification shall be filed with the agency clerk.

HB 1447

2006
CS

Section 3. Section 125.022, Florida Statutes, is created to read:

125.022 Development permits.--When a county denies an application for a development permit, the county shall give written notice to the applicant. The notice must state the grounds or basis, with citation to the applicable ordinance or other legal authority, for the denial of the development permit.

Section 4. Section 166.033, Florida Statutes, is created to read:

166.033 Development permits.--When a municipality denies an application for a development permit, the municipality shall give written notice to the applicant. The notice must state the grounds or basis, with citation to the applicable ordinance or other legal authority, for the denial of the development permit.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1579

Sarasota Manatee Airport Authority

SPONSOR(S): Reagan

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		Nelson <i>LPN</i>	Hamby <i>Y20</i>
2) Finance & Tax Committee			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1579 amends the special act relating to the Sarasota Manatee Airport Authority. The bill:

- authorizes and empowers the authority, to the extent permitted by the State Constitution and laws of the state, to establish, operate or support subsidiary and affiliate entities, either for profit or not for profit, and to establish or support nonaffiliated corporations not for profit, to assist the authority in fulfilling its declared public purposes;
- authorizes the authority to participate in lawful forms of business organization to provide airport or aviation services or engage in activities related thereto;
- authorizes and empowers the authority to be and serve as a local agency under the Florida Industrial Development Financing Act;
- eliminates the aggregate limit on outstanding industrial development revenue bonds issued by the authority;
- makes technical changes; and
- provides an effective date.

According to the Economic Impact Statement, the estimated cost of administration, implementation and enforcement of this bill is \$1,000.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government

This bill would grant broad powers to an independent special district.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Sarasota-Manatee Airport Authority (SMAA) is a bicounty governmental agency created by special act of the Florida Legislature for the purpose of "acquiring, constructing, improving, financing, operating, and maintaining airport facilities." The enabling legislation for the authority states that it is "a body politic and corporate" and a "public instrumentality," and specifically designates the authority as a political subdivision for the purpose of certain tax statutes.

The SMAA is an independent special district as defined by s. 189.403, F.S., and has been identified as such by the Florida Department of Community Affairs. The governing board of the authority is appointed by the Governor and consists of six members, three of whom are residents of Manatee County and three of whom are residents of Sarasota County.

Effect of Proposed Changes

HB 1579 amends the current "Sarasota Manatee Airport Authority Act," ch. 2003-309, L.O.F., as amended. The bill authorizes and empowers the authority, *to the extent permitted by the State Constitution and laws of the state*:

- to establish, operate or support subsidiaries and affiliates—either for profit or not for profit—to *assist the authority in fulfilling its declared public purposes*, including, but not limited to:
 - the provision of airport and aviation-related services to other airport owners or operators and to aviation-related businesses; and
 - the acquisition, management and disposition of properties; and
- to establish or support *nonaffiliated* corporations not for profit *that operate primarily within Sarasota and Manatee Counties* and that have as their purposes the furtherance of the authority's provision and support of its airport, airport facilities, and airport operations and system; and to accomplish such by means of:
 - interest-free or low interest loans;
 - leases of real or personal property either rent-free or for low fees;
 - gifts and grants of funds; or
 - guarantees of indebtedness.

The bill specifies that these subsidiary or affiliate corporations or nonaffiliated corporations not for profit shall not be empowered to engage in business activities within the air operations area¹ of the Sarasota Bradenton International Airport, except to the extent that such activities involve the provision of direct services to air carriers or involve the manufacture, processing or assembly of goods or materials for sale or distribution.

¹ "Air operations area" is defined by the authority's special act for purposes of its law enforcement function to mean "a portion of the airport designed and used for landing, taking off, or surface maneuvering of airplanes." See, Section 14(1)(a) of ch. 2003-309, L.O.F.

The bill also provides that the establishment, operation or support of such subsidiaries or affiliate corporations or nonaffiliated corporations not for profit is *declared to be a public purpose and necessary* for the authority to carry out its public responsibilities and for the welfare of the authority and the public. The bill further states that it is the intent of the Legislature to authorize the formation of these entities to further the interests of the residents of Sarasota and Manatee Counties in maintaining the financial well-being of the authority.

The declared public purpose of the airport authority is to acquire, construct, improve, finance, operate and maintain airport facilities. The proposed language appears to significantly expand on these activities. Ostensibly, the language "to the extent permitted by the State Constitution and laws of the state" serves as security against any unintended consequences which could result from the provisions of this bill. Nonetheless, such drafting may leave the determination of the SMAA's powers to the courts.

The bill also would allow the authority to establish non-affiliated not-for-profit corporations (not 100 percent owned or controlled by the authority), and to provide these entities with interest free loans and gifts, and to guarantee their indebtedness. See, III. COMMENTS, A. CONSTITUTIONAL ISSUES of this analysis. Language in the bill additionally suggests that these entities may operate outside the jurisdiction of the special district.

The authority has indicated that:

It is envisioned that the SMAA might use the powers that would be granted to provide a range of vendor services, such as ground handling, fueling or technical aviation to aviation users at the SMAA's airport, and to other airport operators outside the SMAA's district. Other airports currently providing services such as these include Jacksonville, Houston and Frankfurt, Germany. Such corporations not for profit might also have practical application in the development of those SMAA real estate assets that are not earmarked for aviation purposes. Presently, the SMAA is in the midst of a \$4.5 million project to relocate a flight instrument from the infield in order to open up 40 acres for development. An entity, solely owned and controlled by the SMAA, could be used to manage these non-aviation real estate assets.

The bill additionally authorizes the authority, *to the extent permitted by the State Constitution and laws of the state*:

- to participate as a shareholder in a corporation, a joint venturer, a partner in a limited partnership or a general partnership, or a member of a limited liability company or any other lawful form of business organization that provides airport or aviation services or engages in activities related thereto; and
- to make or arrange for loans, contributions to capital, and other debt and equity financing for the activities of such corporations, joint ventures, partnerships, or other lawful forms of business organization and to guarantee loans for such purposes; to elect the boards of directors of its corporations not for profit; and to utilize, for any lawful purpose, assets and resources of the authority to the extent not needed for airport, aviation, and related activities.

The bill also specifies that the authority shall not be empowered to utilize the authorized business organizations to engage in business activities within the air operations area of the Sarasota Bradenton International Airport, except for limited activities.

Again, the language "to the extent permitted by the State Constitution and laws of the state" presumably protects against any unintended consequences which may result from the provisions of the bill, but may require the construal of certain activities conducted pursuant to this subsection to be litigated. See, III. COMMENTS, A. CONSTITUTIONAL ISSUES of this analysis.

The bill also provides that any organization described in the bill will be exempt from state and local taxation to the extent that said organization engages in educational, scientific, charitable or governmental purposes.

Section 18 of the Sarasota-Manatee Airport Authority Act specifically provides that the "authority as a public body corporate is deemed a political subdivision within the meaning of the exemptions granted under section 196.199, Florida Statutes." Section 196.199(1)(c), F.S., provides that:

All property of the several political subdivisions and municipalities of this state or of entities created by general or special law and composed entirely of governmental agencies, or property conveyed to a nonprofit corporation which would revert to the governmental agency, which is used for governmental, municipal, or public purposes shall be exempt from ad valorem taxation, except as otherwise provided by law.

This section also contains various scenarios whereby government property is exempt from taxation. The proposed provision in the bill appears to be overly broad. Also, the use of the language "to the extent" may be subject to interpretation. Tax exempt status may be available for certain nongovernmental entities in situations where property is used exclusively for literary, scientific, religious or charitable purposes. Nonetheless, the determination of such status necessarily is made on a case-by-case basis.

With regard to industrial development revenue bonds, the bill expressly authorizes and empowers the authority to do all acts or things necessary or proper to be and serve as a "local agency" under part II of ch. 159, F.S., with respect to any project as defined therein, and provides that any bonds issued by the authority pursuant to part II of ch. 159, F.S., will be entitled to all the benefits contained in said part, including, but not limited to, ss. 159.31, 159.39, and 159.40, F.S.

Section 159.27(4), F.S. defines a "local agency" as "... any special district or other local governmental body existing or hereafter created pursuant to the laws of the state, the purpose for the creation of which could reasonably be interpreted to be consistent with the issuance of revenue bonds to finance the cost of projects within the meaning of this part." It would seem that Section 10 of the authority's special act, which grants the authority the authorization to issue such bonds, suffices to bring the authority within this definition.

The bill also eliminates the \$3 million aggregate cap for outstanding industrial development revenue bonds. This cap was enacted 28 years ago with no adjustment for inflation. In s. 159.26, F.S., of the "Florida Industrial Development Financing Act," the Legislature has declared a need to enhance economic activity in the state by attracting manufacturing development, business enterprises management, and other activities conducive to economic promotion. While the SMAA has the power to issue these bonds, the antiquated cap in its enabling act may render them impracticable as a means of financing economic development.

The bill also makes several technical changes including deleting the hyphens in "Sarasota-Manatee Airport Authority" and "Sarasota-Bradenton International Airport," substituting the "Transportation Security Administration" for the "Federal Aviation Administration" as the federal agency authorized to enforce security programs; renaming "airport authority police" as "airport police"; changing the reference to adjacent campus from "University of South Florida" to "New College of Florida" for purposes of defining "airport grounds";² and renaming "airport authority parking enforcement specialists" as "traffic control specialists."

The act takes effect upon becoming a law.

² Since its founding as a private college in 1960, the campus of New College of Florida (NCF) has abutted the Sarasota Bradenton International Airport. In 1975, NCF merged with the University of South Florida (USF). However, the Legislature granted NCF its independence, and it is now the public liberal arts honors college for the State of Florida. This change in the charter reflects the fact the NCF is no longer affiliated with USF.

See s. 1004.32, F.S.

C. SECTION DIRECTORY:

Section 1: Amends ch. 2003-309, L.O.F.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? January 8, 2005

WHERE? The Sarasota Herald-Tribune, a daily newspaper published in Sarasota County.

B. REFERENDUM(S) REQUIRED? Yes ☐ No ☒

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached ☒ No ☐

According to the Economic Impact Statement, the estimated cost of administration, implementation and enforcement of this bill is \$1,000. It is assumed that it will cost approximately \$1,000 to create each subsidiary and affiliated and non-affiliated business organization, and that the SMAA will create one such entity per year in the first two years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

SECTION 10 of Article VII of the State Constitution provides:

Pledging credit.—Neither the state nor any county, school district, municipality, *special district*, or agency of any of them, *shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person....*

This provision bars governments within Florida from using their taxing power or credit to aid private corporations or persons. The purpose of section 10 is to prevent state government from using its vast resources to monopolize, or otherwise "destroy," a segment of private enterprise, and also "to protect public funds and resources from being exploited in assisting or promoting private ventures when the public would be at most only incidentally benefited." Northern Palm Beach County Water Control Dist. v. State, 604 So.2d 440 (Fla., 1992) citing Bannon v. Port of Palm Beach Dist., 246 So.2d 737, 741 (Fla. 1971).

The courts have recognized the authority of a local government to pledge public funds or property to a nongovernmental entity such as a nonprofit corporation, but "[o]nly when there was some clearly identified and concrete public purpose as primary objective and reasonable expectation that such

purpose would be substantially and effectively accomplished...and there must have been some control retained by the public authority...." O'Neill v. Burns, 198 So.2d 1 (Fla. 1967).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Sponsor should consider amending the bill to retain the status quo with regard to the designation of "airport authority police" and "parking enforcement specialists" in order to conform the act's terminology to the use of terms in the Florida Statutes.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL AMENDMENT POLICY

All substantive amendments to local bills must be approved by the legislative delegation. This form must accompany all substantive amendment(s) (committee, council or floor). All substantive amendments must be reviewed by appropriate House staff. This form is not needed for technical, clarifying or conforming amendments.

BILL #:

HB 1579

SPONSOR(S):

Representative Ron Reagan, District 67

RELATING TO:

Sarasota-Manatee Airport Authority

[Indicate Area Affected (City, County, Special District) and Subject]

SPONSOR OF AMENDMENT:

CONTACT PERSON:

Charles D. (Dan) Bailey, Jr.

PHONE # and E-mail:

941/329-6609

dbailey@williamsparker.com

REVIEWED BY HOUSE STAFF [] (must be checked)

I. BRIEF DESCRIPTION OF AMENDMENT DESIRED:

The bill would amend Ch. 2003-309, Laws of Florida by designating the SMAA as a "local agency" under part II, chapter 159, F.S. for the issuance of industrial development revenue bonds (IDBs); eliminate the current \$3 million cap on SMAA-issued IDBs; authorize the SMAA to establish, operate or support subsidiary and affiliated and non-affiliated business organizations to assist the SMAA in fulfilling its public purposes, subject to limitations; eliminate the hyphens in name of "Sarasota-Manatee Airport Authority" and in name of "Sarasota-Bradenton International Airport; substitute the "Transportation Security Administration" in place of the "Federal Aviation Administration" as the federal agency authorized to enforce security programs; re-designate "airport authority police" as "airport police"; change the reference to the adjacent campus from "University of South Florida" to "New College of Florida" for purposes of defining the boundaries of the "airport grounds"; and re-designate "parking enforcement specialists" as "traffic control specialists".

II. REASON/NEED FOR AMENDMENT:

Ch. 2003-309 already empowers SMAA to issue IDBs, but it does not cross-reference such power to part II, chapter 159, F.S., the "Florida Industrial Development Financing Act" which applies to special districts generally. This bill would interconnect these complimentary powers. Moreover, Ch. 2003-309 imposes a \$3 million cap on SMAA-issued IDBs, but the cap was enacted 28 years ago with no adjustment for inflation. Because IDBs place no public funds at risk, there is no rational basis for any monetary cap. The establishment, operation or support of subsidiary and affiliated and non-affiliated business organizations would enable the SMAA to provide a range of vendor services to aviation users and other airport operators. Such entities would also enable SMAA to partner with private-sector companies to leverage expertise and capital. The remainder of the bill involves non-substantive, housekeeping changes.

III. THE AMENDMENT DESCRIBED ABOVE HAS BEEN APPROVED BY A MAJORITY OF THE DELEGATION:

YES ☒ NO ☐ UNIT RULE ☐ UNANIMOUS ☒


Delegation Chair (Original Signature) Date

Representative Ron Reagan
Chair, Sarasota County
Legislative Delegation

HOUSE OF REPRESENTATIVES

2006 LOCAL BILL AMENDMENT POLICY

All substantive amendments to local bills must be approved by the legislative delegation. This form must accompany all substantive amendment(s) (committee, council or floor). All substantive amendments must be reviewed by appropriate House staff. This form is not needed for technical, clarifying or conforming amendments.

BILL #: HB 1579

SPONSOR(S): Representative Ron Reagan, District 67

RELATING TO: Sarasota-Manatee Airport Authority
(Indicate Area Affected (City, County, Special District) and Subject)

SPONSOR OF AMENDMENT: _____

CONTACT PERSON: Charles D. (Dan) Bailey, Jr.

PHONE # and E-mail: 941/329-6609 dbailey@williamsparker.com

REVIEWED BY HOUSE STAFF [] (must be checked)

I. BRIEF DESCRIPTION OF AMENDMENT DESIRED:

The bill would amend Ch. 2003-309, Laws of Florida by designating the SMAA as a "local agency" under part II, chapter 159, F.S. for the issuance of industrial development revenue bonds (IDBs); eliminate the current \$3 million cap on SMAA-issued IDBs; authorize the SMAA to establish, operate or support subsidiary and affiliated and non-affiliated business organizations to assist the SMAA in fulfilling its public purposes, subject to limitations; eliminate the hyphens in name of "Sarasota-Manatee Airport Authority" and in name of "Sarasota-Bradenton International Airport"; substitute the "Transportation Security Administration" in place of the "Federal Aviation Administration" as the federal agency authorized to enforce security programs; re-designate "airport authority police" as "airport police"; change the reference to the adjacent campus from "University of South Florida" to "New College of Florida" for purposes of defining the boundaries of the "airport grounds"; and re-designate "parking enforcement specialists" as "traffic control specialists".

II. REASON/NEED FOR AMENDMENT:

Ch. 2003-309 already empowers SMAA to issue IDBs, but it does not cross-reference such power to part II, chapter 159, F.S., the "Florida Industrial Development Financing Act" which applies to special districts generally. This bill would interconnect these complimentary powers. Moreover, Ch. 2003-309 imposes a \$3 million cap on SMAA-issued IDBs, but the cap was enacted 28 years ago with no adjustment for inflation. Because IDBs place no public funds at risk, there is no rational basis for any monetary cap. The establishment, operation or support of subsidiary and affiliated and non-affiliated business organizations would enable the SMAA to provide a range of vendor services to aviation users and other airport operators. Such entities would also enable SMAA to partner with private-sector companies to leverage expertise and capital. The remainder of the bill involves non-substantive, housekeeping changes.

III. THE AMENDMENT DESCRIBED ABOVE HAS BEEN APPROVED BY A MAJORITY OF THE DELEGATION:

YES ☒ NO ☐ UNIT RULE ☐ UNANIMOUS ☒

Les Miller, Jr.
Delegation Chair (Original Signature)

Senator Lesley "Les" Miller, Jr.
Chair, Manatee County
Legislative Delegation

02/06
Date

ANALYSIS UNDER LOCAL BILL POLICY

BILL #:

SPONSOR(S): Representative Ron Reagan, District 67

RELATING TO: Sarasota-Manatee Airport Authority (SMAA)

CRITERIA:

1. Does the bill meet constitutional and statutory requirements and conform to current legal precedent? Yes. The bill would amend Ch. 2000-309, Laws of Florida (the SMAA Enabling Act), to conform to part II, chapter 159, F.S., which is the general law governing the issuance of special district industrial development revenue bonds (IDBs). The bill would also amend Ch. 2000-309 to authorize the SMAA to establish, operate or support subsidiary and affiliated and non-affiliated business organizations to assist SMAA in fulfilling its public purposes. However, the bill expressly limits the latter powers "[t]o the extent permitted by the Constitution and laws of this state."

2. Does the bill comply with the policies and procedures identified in the State of Florida House of Representatives Local Bill Policies and Procedures Manual 2005? Yes. The required notice has been published and the required House forms have been filed.

3. Does the bill provide for an action that may be accomplished at the local level? No. The SMAA derives its powers exclusively from the Legislature through its Enabling Act and general laws applicable to airport authorities, local governments and special districts. The bill would grant powers that can only be granted by an act of the Legislature.

4. Does the bill allow double taxation (e.g., an assessment for the provision of the same services by two different governmental entities such as a county government and a special district)? No. The SMAA does not presently have the power to levy taxes or special assessments; and the bill would not grant such powers.

5. Does the bill require a REFERENDUM of the citizens in the affected area(s)? No. The following questions and answers explain why no referendum is required:

(a) Does the bill propose an increase financial cost to local governments or taxpayers? No, while the creation of business organizations will necessitate the expenditure of nominal amounts by the SMAA, it will not increase financial costs to any other governmental entities or to any taxpayers.

(b) Does the bill effect a change in authority (i.e. taxing authority or governing authority) or the geographical or jurisdictional boundaries of local governments? No.

(c) Does the bill propose a change in taxation (ad valorem or other), fees, assessments, or bonding authority? No. The SMAA has no power to levy taxes or assessments. It does have the power to impose fees for use of airport facilities, but the bill does not propose to alter those powers. While the bill does seek to modify existing provisions relating to IDBs, they are not the type of bonds requiring a referendum. Specifically, (1) the bill would not create a special district with ad valorem taxing power or change the authorized millage rate for an existing special district; (2) the bill would not authorize a temporary tax levy, in excess of

the constitutional millage cap, or otherwise; and (3) the bill would not levy taxes for the payment of long-term bonds (IDB's are not payable from tax revenues).

(d) ***Does the bill propose a change in authorized use of revenues?*** No. The SMAA receives no tax revenues.

(e) ***Does the bill propose a change in voting procedures, elections, or the composition (voting members) of a local government, commission, special district or school district?*** No.

(f) ***Does the local bill authorize the creation, amendment or repeal of a county charter?*** No.

(g) ***Does the bill authorize the consolidation of city or county government?***
No.

6. ***Does the bill provide for any exceptions or exemptions from general law?***
No.

7. ***Is the bill supported by a majority vote of the governing board(s) of the affected local governments?*** Yes. On October 19, 2005, the governing board of the SMAA voted as follows: "MOTION: Commissioner Baylis moved to support the changes to the Airport's enabling legislation as proposed. Commissioner Rynerson seconded. PASSED UNANIMOUSLY (6-0)."

AFFIDAVIT OF PUBLICATION

SARASOTA HERALD-TRIBUNE
PUBLISHED DAILY
SARASOTA, SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA
COUNTY OF MANATEE

BEFORE THE UNDERSIGNED AUTHORITY PERSONALLY APPEARED SHARI BRICKLEY, WHO ON OATH SAYD SHE IS ADVERTISING MANAGER OF THE SARASOTA HERALD-TRIBUNE, A DAILY NEWSPAPER PUBLISHED AT SARASOTA, IN SARASOTA COUNTY FLORIDA; AND CIRCULATED IN MANATEE COUNTTEE DAILY; THAT THE ATTACHED COPY OF ADVERTISEMENT BEING A NOTICE IN THE MATTER OF:

NOTICE OF INTENTION TO SEEK ENACTMENT OF LOCAL LEGISLATION TO WHOM IT MAY CONCERN: NOTICE is hereby given of intention to apply to the Legislature of the State of Florida before the 2006 Florida Legislature in regular session or any special or extende

IN THE COURT WAS PUBLISHED IN THE MANATEE EDITION OF SAID NEWSPAPER IN THE ISSUES OF:

1/8 1x

AFFIANT FURTHER SAYS THAT THE SAID SARASOTA HERALD-TRIBUNE IS A NEWSPAPER PUBLISHED AT SARASOTA, IN SAID SARASOTA COUNTY, FLORIDA, AND THAT THE SAID NEWSPAPER HAS THERETOFORE BEEN CONTINUOUSLY PUBLISHED IN SAID SARASOTA COUNTY, FLORIDA, EACH DAY, AND HAS BEEN ENTERED AS SECOND CLASS MAIL MATTER AT THE POST OFFICE IN BRADENTON, IN SAID MANATEE COUNTY, FLORIDA, FOR A PERIOD OF ONE YEAR NEXT PRECEDING THE FIRST PUBLICATION OF THE ATTACHED COPY OF ADVERTISEMENT; AND AFFIANT FURTHER SAYS THAT SHE HAS NEITHER PAID NOR PROMISED ANY PERSON, FIRM OR CORPORATION ANY DISCOUNT, REBATE, COMMISSION OR REFUND FOR THE PURPOSE OF SECURING THIS ADVERTISEMENT FOR PUBLICATION IN THE SAID NEWSPAPER.

SIGNED

Shari Brickley

SWORN OR AFFIRMED TO, AND SUBSCRIBED BEFORE ME THIS 1st DAY OF Feb, A.D., 2006
BY SHARI BRICKLEY WHO IS PERSONALLY KNOWN TO ME.

Notary Public

My commission expires 11th day of Oct, 2008



Bobbie J. Clark
My Commission DD347713
Expires October 11, 2008

NOTICE OF INTENTION TO SEEK ENACTMENT OF LOCAL LEGISLATION

TO WHOM IT MAY CONCERN: NOTICE is hereby given of intention to apply to the Legislature of the State of Florida before the 2006 Florida Legislature in regular session or any special or extended session, for the passage of local legislation, the substance of which is as follows:

An act relating to the Sarasota-Manatee Airport Authority; amending chapter 2003-309, Laws of Florida, as amended by chapter 204-401, Laws of Florida, authorizing and empowering the authority to be and serve as a local agency under part II, chapter 159, Florida Statutes, the Florida Industrial Development Financing Act; eliminating the aggregate limit on outstanding industrial development revenue bonds issued by the authority; authorizing and empowering the authority, to the extent permitted by the Constitution and laws of this state, to establish, operate or support subsidiary and affiliate entities, either for profit or not for profit, and nonaffiliated corporations not for profit to assist the authority in fulfilling its declared public purposes, subject, however, to restrictions; to authorize the authority to participate in lawful forms of business organization to provide airport or aviation services or engage in activities related thereto, subject, however, to restrictions; eliminating hyphens in name of "Sarasota-Manatee Airport Authority" and in name of "Sarasota-Bradenton International Airport"; substituting the Transportation Security Administration for the Federal Aviation Administration as federal agency authorized to enforce security programs; re-designating "airport authority police" as "airport police"; changing reference to adjacent campus from "University of South Florida" to "New College of Florida" for purposes of defining "airport grounds"; re-designating "parking enforcement specialists" as "traffic control specialists"; providing an effective date.

SARASOTA-MANATEE AIRPORT AUTHORITY
Publish: January 6, 2005

LEGAL NOTICES



Proposal 06-15W

Continuing Contract
Consultant:

The City of Sarasota is seeking the services of a firm(s) in accordance with the Competitive Negotiations Act, to provide Civil Engineering planning and designing small and plus other projects, on an as needed (1) year period per the firm may be selected and services on a rotating basis of each firm's resources. This agreement may be for one (1) year periods by budgetary limitations, for the

these services is available from (800) 711-1712 or by services address at www.demandstar.com. The City of Sarasota General Counsel cautioned that the submittal of Addenda will be posted and at least five days prior to the date the bids are to be opened. Incomplete proposals, being considered for this project (1) original and five(5) copies to this RFP, prior to 2:30 PM on the office of the Director of General

Angelo, Room #202. Qualified responses will be in evaluation committee. Firms new and shall be prepared to attend to a pre-appointed evaluation committee. The committee will rank the top three (3) firms for the project. The committee will include team and individual qualifications; availability to meet; previous experience of a firm; the work; evaluation from past and current work; and on a State Certified Minority

reference associated with this Questions regarding these cited to Dick Williams, at (941) 51-3627. Pub: 01/07 & 01/08/06



INVITATION TO BID

Notice to Bidders

Bid #06-11W

Wastewater

The City of Sarasota will receive sealed bids until 2:30 p.m. on January 24, 2006, then and there to be publicly opened and read aloud for the purpose of selecting a supplier to provide the Public Works - Utilities Division of the City of Sarasota with Transporting of Wastewater Services.

Bids shall be delivered or mailed to the Purchasing Department, located at 111 Orange Avenue, Room 202, Sarasota, Florida or P.O. Box 1058, Sarasota, Florida 34230.

The bid forms and specifications are available from Demandstar at (800) 711-1712 or by their Internet address at www.demandstar.com.

The City of Sarasota, Florida reserves the right to reject any or all bids, or any parts of a bid, or to waive any irregularities and informalities in the bid process, and to award a contract to the lowest responsive and responsible bidder.

Pub: January 1 & 8, 2006



INVITATION TO BID

Notice to Bidders

Bid #06-15W

Advanced Wastewater Treatment Facility Improvements - Effluent Air Strippers

The City of Sarasota will receive sealed bids until 2:30 p.m. on February 15, 2006, then and there to be publicly opened and read aloud for the purpose of



Request for proposal RFP 06-12W

Electronic Outdoor Sign For

The City of Sarasota, Florida, Van Wezel Performing Arts Hall, is requesting proposals from qualified individuals/firms to design and install a State of the Art, two-sided, full color, high definition LED electronic sign, preferably costing \$100,000 or less, on the South West corner of the intersection of State Route US 41 North (Tami Trail) and West 10th Street, Sarasota Florida 34236. The sign shall include all necessary wireless electronic equipment and software so that the sign can be operated and controlled from the Van Wezel Administrative Offices. The design, size, shape and colors of the proposed sign must be attractive and compliment the design and colors of the Van Wezel Performing Arts Hall. The functionality of the proposed sign must meet or exceed the requirements stated in this Request for Proposal.

Official plans and specifications for this project are available from Demandstar by calling (800) 711-1712 or by accessing their Internet address at www.demandstar.com. Vendors who obtain specification and plans from sources other than DemandStar are cautioned that the bid package may be incomplete. The City's official bidders list is obtained from DemandStar. Addenda will be posted and disseminated by DemandStar at least five days prior to the bid opening date to all vendors who are listed on the official bidders list. The City may not accept incomplete proposals.

Those individual/firms interested in being considered for this project are instructed to submit five (1) original and five (5) copies of their proposal prior to 2:30p.m., February 14, 2006 to the office of the City of Sarasota Director of General Services and Purchasing Department, 111 South Orange Avenue, Room #202, Sarasota, Florida, 34236. Qualified responses will be reviewed and ranked by an evaluation committee. Those firms selected may be required to make scheduled presentations to a pre-appointed evaluation committee, if required. The committee will recommend to the City Manager, and to the City Commission, its ranking of the top three (3) firms for the Commission's approval.

There will be a non-mandatory Pre-proposal conference and site tour at the Van Wezel Performing Arts Hall Administrative Offices, 777 North Tami Trail, Sarasota, Florida 34236 on January 24, 2006 at 10:00a.m. Questions about the project will be fielded and answered by Van Wezel management. Immediately following the meeting, attendees will be shown the site which the old sign will be removed from and the new sign is to be installed. In addition, attendees also will be shown the new site where the old sign is to be moved to and installed. Interested parties are encouraged to attend in order to be thoroughly informed of the Scope of Work involved.

Pub: January 1 & 8, 2006

INVITATION TO BID FOR CONSTRUCTION OF PORT MANATEE WAREHOUSE NO. 11 171,000 SF DRY STORAGE WAREHOUSE FOR MANATEE COUNTY PORT AUTHORITY MANATEE COUNTY, FLORIDA

Sealed Bids will be received by the undersigned at the office of the Manatee County Port Authority by the Executive Director, Port Manatee, 300 Tampa Bay Way, Suite One, Palmetto, Florida 34221-6608, until 2:00 p.m. local time, on February 9, 2006 at which time and place they will be publicly opened and read aloud.

The work for which these Bids are to be submitted consists of construction of a pre-engineered 171,000 +/- S. F. one story metal warehouse, at Port Manatee, Palmetto, Florida. The work includes, but is not limited to site work, parking utilities, landscaping, lighting, and fire protection.

Substantial Completion data will be September 30, 2006.

All work performed shall be in accordance with the Bidding Documents pertaining thereto, which may be examined at the office of CH2M HILL, 1905 Intermodal Circle, Suite 330, Palmetto, Florida 34221.

One copy of the Bid Documents, including blank bid forms, may be obtained at the office of CH2M HILL, on January 9, 2006, upon payment of \$200.00 made payable to CH2M HILL, which amount will not be refunded.

A Pre-Bid Meeting will be held on January 26, 2006 at the Port Manatee Intermodal Center, Manatee County Port Authority Chambers, 1905 Intermodal Circle, Third Floor, Palmetto, Florida at 2:00 p.m. local time.

Last date for Contractor to submit faxed questions to CH2M HILL shall be 5 DAYS PRIOR TO BID OPENING.

Last date for CH2M HILL to issue an Addendum shall be February 7, 2006.

A certified or cashier's check on a national or state bank or a bid bond in the sum of not less than five percent (5%) of the amount of the bid, made payable to the Manatee County Port Authority, shall accompany each Bid as a guarantee that the bidder will not withdraw from the competition after the opening of the Bids. In the event that the Contract is awarded to the bidder, he will enter into the Contract and furnish and pay for the required performance

REQUEST FOR PROPOSAL - #6171RC

Sarasota County Government will receive proposals from qualified firms and individuals at Sarasota County Purchasing, (3rd Floor) 1660 Ringling Boulevard, Sarasota, FL 34236 for the purpose of:

Transit Marketing Services

Request for Proposal documents may be obtained from www.demandstar.com or by calling 1-800-711-1712.

TIME AND DATE DUE: Eight (8) signed copies of the proposal must be received at the address above, no later 2:00 p.m., 1/31/2006. RFP# 6171RC should be shown on all documents.

For questions concerning this Request for Proposal, please contact Reba Cline at (941-861-5128).

Published: 1/8/2006

NOTICE OF PUBLIC MEETING

In connection with the planned redevelopment of Grove Terrace Apartments, the public is invited to attend a workshop to be held on Thursday January 12, 2006 at 6:00 p.m. at the Community Center of the Venice Housing Authority located at 201 Grove Street North, Venice, Florida. The purpose of the workshop will be to provide information on the redevelopment plan and to obtain suggestions and comments.

Peter Lopez

Executive Director, Venice Housing Authority

Pub: January 6 & 8, 2006

NOTICE OF PUBLIC WORKSHOP

NOTICE IS HEREBY GIVEN that a Public Workshop will be held to discuss the proposed erosion control project known as the South Siesta Key Beach Restoration Project, and the establishment of an Erosion Control Line for said project. The location of the proposed erosion control project is as follows:

Sections 29 and 32, Township 37S, Range 18E:
Sarasota County, Florida

The Public Workshop will be held at 1660 Ringling Boulevard, Sarasota, in the Board Chambers, on January 25, 2006, at 6:00 PM.

For further information contact the Sarasota County Call Center, at (941) 861-5000 and ask for the South Siesta Key Beach Restoration Project.

Published: January 8, 15 & 22, 2006

NOTICE OF INTENTION TO SEEK ENACTMENT OF LOCAL LEGISLATION

TO WHOM IT MAY CONCERN: NOTICE is hereby given of intention to apply to the Legislature of the State of Florida before the 2006 Florida Legislature in regular session or any special or extended session, for the passage of local legislation, the substance of which is as follows:

An act relating to the Sarasota-Manatee Airport Authority; amending chapter 2003-309, Laws of Florida, as amended by chapter 204-401, Laws of Florida, authorizing and empowering the authority to be and serve as a local agency under part II, chapter 159, Florida Statutes, the Florida Industrial Development Financing Act; eliminating the aggregate limit on outstanding industrial development revenue bonds issued by the authority; authorizing and empowering the authority, to the extent permitted by the Constitution and laws of this state, to establish, operate or support subsidiary and affiliate entities, either for profit or not for profit, and nonaffiliated corporations not for profit to assist the authority in fulfilling its declared public purpose, subject, however, to restrictions; to authorize the authority to participate in lawful forms of business organization to provide airport or aviation services or engage in activities related thereto, subject, however, to restrictions; eliminating hyphens in name of "Sarasota-Manatee Airport Authority" and in name of "Sarasota-Bradenton International Airport"; substituting the Transportation Security Administration for the Federal Aviation Administration as federal agency authorized to enforce security programs; re-designating "airport authority police" as "airport police"; changing reference to adjacent campus from "University of South Florida" to "New College of Florida" for purposes of defining "airport grounds"; re-designating "parking enforcement specialists" as "traffic control specialists"; providing an effective date.

SARASOTA-MANATEE AIRPORT AUTHORITY
Publish: January 8, 2005

TALLAHASSEE, FLORIDA

NOTICE

Notice is hereby given that the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, or designee, is proposing the establishment of an Erosion Control Line, pursuant to Section 181.161, Florida Statutes, and will hold a Public Hearing at 1660 Ringling Boulevard, Sarasota in the Board Chambers, on January 25, 2006, at 7:00 PM, immediately following a 6 PM county-sponsored workshop on this subject. The Board of Trustees of the

**HOUSE OF REPRESENTATIVES
2006 LOCAL BILL CERTIFICATION**

BILL #: HB 1579
SPONSOR(S): Representative Ron Reagan, District 67
RELATING TO: Sarasota-Manatee Airport Authority
(Indicate Area Affected (City, County, Special District) and Subject)
NAME OF DELEGATION: Sarasota
CONTACT PERSON: Charles D. (Dan) Bailey, Jr.
PHONE # and E-Mail: 941/329-6609 dbailey@williamsparser.com

I. House policy requires that three things occur before a council or a committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) a local public hearing by the legislative delegation must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation. Local bills will not be considered by a council or a committee without a completed, original Local Bill Certification Form.

(1) Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES ☒ NO ☐

(2) Has a public hearing been held? YES ☒ NO ☐

Date hearing held: Sarasota Legislative Delegation met on November 3, 2005
in Sarasota; Manatee Legislative Delegation met on

Location: November 17, 2005 in Bradenton and again on January 10,
2006 in Tallahassee

(3) Was this bill formally approved by a majority of the delegation members?
YES ☒ NO ☐ UNIT RULE ☐ UNANIMOUS ☐

II. Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.

Has this constitutional notice requirement been met?

Notice published: YES ☒ NO ☐ DATE 1/8/06
Sarasota Herald-Tribune

Where? County Sarasota and Manatee

Referendum in lieu of publication: YES ☐ NO ☒

III. Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.

Has this constitutional taxation requirement been met?
YES ☒ NO ☐ NOT APPLICABLE ☐

House policy requires that an Economic Impact Statement for local bills be prepared at the local level.

Ron Reagan 3/14/06
Delegation Chair (Original Signature) Date

Representative Ron Reagan
Chair, Sarasota County
Legislative Delegation

2006 LOCAL BILL CERTIFICATION

HB 1579

Representative Ron Reagan, District 67

Sarasota-Manatee Airport Authority

(Indicate Area Affected (City, County, Special District) and Subject)

Sarasota

Charles D. (Dan) Bailey, Jr.

941/329-6609

dbailey@williamsparker.com

1. House policy requires that three things occur before a council or a committee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) a local public hearing by the legislative delegation must be held in the area affected; and (3) at or after any local public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the legislative delegation. Local bills will not be considered by a council or a committee without a completed, original Local Bill Certification Form.

(1) Does the delegation certify that the purpose of the bill cannot be accomplished locally? YES ☒ NO ☐

(2) Has a public hearing been held? YES ☒ NO ☐

Sarasota Legislative Delegation met on November 3, 2005

Date hearing held: Sarasota Legislative Delegation met on November 3, 1964 in Sarasota; Manatee Legislative Delegation met on November 4, 1964 in Manatee.

Location: November 17, 2005 in Bradenton and again on January 10, 2006 in Tallahassee

(3) Was this bill formally approved by a majority of the delegation members?
 YES ☒ NO ☐ UNIT RULE ☐ UNANIMOUS ☐

- II. Article III, Section 10, of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.**

Has this constitutional notice requirement been met?

Notice published: YES ☒ NO ☐ DATE 1/8/06
Sarasota Herald-Tribune

Where? _____ **County** Sarasota and Manatee

Referendum in lieu of publication: YES [] NO [x]

- III. Article VII, Section 9(b), of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.**

Has this constitutional taxation requirement been met?

YES ☒ NO ☐ NOT APPLICABLE ☐

House policy requires that an Economic Impact Statement for local bills be prepared at the local level.

Les Mitter, Sr

02/06

Delegation Chair (Original Signature)

Date _____

Senator Lesley "Les" Miller, Jr.

Chair, Manatee County

Legislative Delegation

HOUSE OF REPRESENTATIVES

2006 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible, this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is filed.

BILL #:

HB 1579

SPONSOR(S):

Representative Ron Reagan, District 67

RELATING TO:

Sarasota-Manatee Airport Authority

(Indicate Area Affected (City, County, Special District) and Subject)

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

Expenditures:

FY 06-07

FY 07-08

1,000

1,000

II. ANTICIPATED SOURCE(S) OF FUNDING:

Federal:

FY 06-07

FY 07-08

State:

Local: Sarasota-Manatee Airport Authority

1,000

1,000

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

Revenues:

FY 06-07

FY 07-08

0

0

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:

Industrial Development Revenue Bonds ("IDBs"). In s. 159.26, F.S., the Legislature determined that that IDBs are needed to enhance economic activity in the state by attracting manufacturing development, business enterprises management, and other activities conducive to economic promotion. But while the Sarasota-Manatee Airport Authority (SMAA) currently has the power to issue IDBs, its to use of such power is crippled by a provision in its enabling act restricting IDBs to an aggregate cap (established 28 years ago) of only \$3 million. In the face of this cap, it is impracticable for the SMAA to use IDBs as a means of financing economic development. Elimination of the cap will restore the viability of IDBs.

Subsidiary and affiliated and non-affiliated business organizations. The establishment, operation or support of such organizations would enable the SMAA to provide a range of vendor services to aviation users and other airport operators. They would also enable SMAA to partner with private-sector companies to leverage expertise and capital.

Disadvantages:

Industrial Development Revenue Bonds ("IDBs"). There are no disadvantages to elimination of the monetary cap. Virtually every other special district in Florida has the power to issue IDBs without any monetary cap.

Subsidiary and affiliated and non-affiliated business organizations. There are no disadvantages.

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

Industrial Development Revenue Bonds. Predicting the precise impact of such bonds upon competition and employment would be difficult. As noted above, in s. 159.26, F.S., the Legislature acknowledged that that IDBs have the potential to enhance economic activity in the state by attracting manufacturing development, business enterprises management, and other activities conducive to economic promotion. Such bonds are not designed to promote competition per se, but they provide an option to the conventional financing of economic development projects.

Subsidiary and affiliated and non-affiliated business organizations. Similarly, the mere creation of the entities, per se, is not designed to generate competition or open market employment, but it would provide a platform to promote such activities.

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

In regard to IDBs, it is assumed that any person seeking capital for an economic development project at the Sarasota-Bradenton International Airport would assess the benefits of IDBs versus conventional financing, and would opt for IDBs whenever it makes economic sense to do so. In regard to the use of subsidiary and affiliated and non-affiliated business organizations, it is assumed that it will cost about \$1,000 to create each such entity, and that the SMAA will create one entity per year in the first two years, at a cost of \$1,000 per entity.

PREPARED BY: 

MARTIN LANGE

1/31/06

Date

TITLE: Vice President and Chief Financial Officer

REPRESENTING: Sarasota-Manatee Airport Authority

PHONE: (941/359-2770, x4230)

E-Mail Address: martin.lange@srq-airport.com

HB 1579

2006

A bill to be entitled

An act relating to the Sarasota Manatee Airport Authority; amending chapter 2003-309, Laws of Florida; authorizing and empowering the authority to be and serve as a local agency under part II, chapter 159, F.S., the Florida Industrial Development Financing Act; eliminating the aggregate limit on outstanding industrial development revenue bonds issued by the authority; authorizing and empowering the authority, to the extent permitted by the State Constitution and laws of this state, to establish, operate, or support subsidiary and affiliate entities, either for profit or not for profit, and to establish or support nonaffiliated corporations not for profit, to assist the authority in fulfilling its declared public purposes; authorizing the authority to participate in lawful forms of business organization to provide airport or aviation services or engage in activities related thereto; deleting hyphens in "Sarasota-Manatee Airport Authority" and "Sarasota-Bradenton International Airport"; substituting the Transportation Security Administration for the Federal Aviation Administration as the federal agency authorized to enforce security programs; renaming "airport authority police" as "airport police"; changing the reference to adjacent campus from "University of South Florida" to "New College of Florida" for purposes of defining "airport grounds"; renaming "airport authority parking enforcement specialists" as "traffic control specialists"; providing an effective date.

Page 1 of 11

CODING: Words stricken are deletions; words underlined are additions.

hb1579-00

HB 1579

2006

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1, subsection (1) of section 3, subsection (11) of section 5, subsection (1) of section 10, subsections (1), (3), and (4) of section 14, and subsection (2) of section 16 of section 3 of chapter 2003-309, Laws of Florida, are amended, and subsections (22) and (23) are added to section 5 of that section, to read:

Section 1. Short title.--This act may be cited as ~~shall be known by the popular name~~ the "Sarasota Manatee ~~Sarasota Manatee~~ Airport Authority Act."

Section 3. Creation and membership of authority.--

(1) There is hereby created a body politic and corporate to be known as the "Sarasota Manatee ~~Sarasota Manatee~~ Airport Authority" for the purpose of acquiring, constructing, improving, financing, operating, and maintaining airport facilities. The authority is constituted a public instrumentality, and the exercise by the authority of its powers conferred by this act is deemed and held to be the performance of essential governmental functions.

Section 5. Powers of the authority.--The authority is authorized and empowered:

(11) To acquire real property in the name of the authority by gift, purchase, or the exercise of the power of eminent domain in accordance with the laws of this state which may be applicable to the exercise of such powers by counties or municipalities, including, without limitation, the leasehold

HB 1579

2006

interest of lessees under leases made by the authority as lessor; to acquire such personal property as it considers necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, operation, maintenance, or repair of any airport facilities; and to hold and dispose of all such real and personal property under its control. The power granted in this subsection, and under subsection (5) for acquisition of lands, is limited to lands or interests therein needed for airport purposes for the existing Sarasota Bradenton ~~Sarasota-Bradenton~~ International Airport; however, such limitation does not apply to any other lands or interests therein if:

(a) The acquisition is for a general aviation facility that is not acquired for purposes of accommodating major certified air carriers and the acquisition is approved by resolutions of the county and municipality, if any, within which such lands lie; or

(b) The acquisition is for use by major certified air carriers and has been approved in a referendum of electors in each of the Counties of Manatee and Sarasota.

(22) To the extent permitted by the State Constitution and laws of this state, to establish, operate, or support subsidiaries and affiliates, either for profit or not for profit, to assist the authority in fulfilling its declared public purposes, including, but not limited to, the provision of airport and aviation-related services to other airport owners or operators and to aviation-related businesses and the acquisition, management, and disposition of properties; to

HB 1579

2006

85 establish or support nonaffiliated corporations not for profit
 86 that operate primarily within Sarasota and Manatee Counties and
 87 that have as their purposes the furtherance of the authority's
 88 provision and support of its airport, airport facilities, and
 89 airport operations and system; and to accomplish such
 90 establishment, operation, or support of any such subsidiary,
 91 affiliate, or nonaffiliated corporation not for profit by means
 92 of loans of funds either interest-free or at low interest,
 93 leases of real or personal property either rent-free or for low
 94 rental, gifts and grants of funds, or guarantees of indebtedness
 95 of such subsidiaries, affiliates, and nonaffiliated corporations
 96 not for profit; however, the subsidiary or affiliate
 97 corporations or nonaffiliated corporations not for profit
 98 authorized by this subsection shall not be empowered to engage
 99 in business activities within the air operations area of the
 100 Sarasota Bradenton International Airport, except to the extent
 101 that such activities involve the provision of direct services to
 102 air carriers or involve the manufacture, processing, or assembly
 103 of goods or materials for sale or distribution. The
 104 establishment, operation, or support of a subsidiary or
 105 affiliate corporation or nonaffiliated corporation not for
 106 profit is hereby found and declared to be a public purpose and
 107 necessary for the authority to carry out its public
 108 responsibilities and for the welfare of the authority, the
 109 inhabitants of Sarasota and Manatee Counties, airport users, and
 110 the traveling public. It is the intent of the Legislature to
 111 authorize the formation of the entities described in this
 112 subsection to further the interests of the residents of Sarasota

HB 1579

2006

and Manatee Counties in maintaining the financial well-being of the authority by providing, directly or indirectly, for the delivery, financing, and support of aviation and airport services and related activities to the extent consistent with the financial, facility, and development needs of the authority.

(23) To the extent permitted by the State Constitution and laws of this state, to participate as a shareholder in a corporation, a joint venturer in a joint venture, a partner in a limited partnership or a general partnership, or a member of a limited liability company or any other lawful form of business organization that provides airport or aviation services or engages in activities related thereto; to make or arrange for loans, contributions to capital, and other debt and equity financing for the activities of such corporations, joint ventures, partnerships, or other lawful forms of business organization and to guarantee loans for such purposes; to elect the boards of directors of its corporations not for profit; and to utilize, for any lawful purpose, assets and resources of the authority to the extent not needed for airport, aviation, and related activities; however, the authority shall not be empowered to utilize the forms of business organization authorized by this subsection to engage in business activities within the air operations area of the Sarasota Bradenton International Airport, except to the extent that such activities involve the provision of direct services to air carriers or involve the manufacture, processing, or assembly of goods or materials for sale or distribution. Any organization described in this subsection or subsection (22) shall be exempt from state

HB 1579

2006

141 and local taxation to the extent that said organizations engage
142 in educational, scientific, charitable, or governmental
143 purposes.

144 Section 10. Industrial development revenue bonds.--

145 (1) It is the purpose of this section to authorize the
146 authority to foster and encourage the development of industrial
147 facilities, including pollution control facilities, to create or
148 preserve employment opportunities, to protect the physical
149 environment, to preserve and increase the prosperity of the
150 Counties of Sarasota and Manatee, and to promote the general
151 welfare of all their citizens without the use of public funds by
152 issuing industrial development revenue bonds to assist the
153 financing of such facilities. It is declared that there are a
154 number of industrial facilities on lands presently owned by the
155 authority which are greatly in need of reconstruction,
156 improvement, remodeling, replacement, or enlargement in order
157 that these lands and facilities may be best utilized pending any
158 future use of such lands and facilities for airport purposes and
159 that the financing of such reconstruction, improvement,
160 remodeling, replacement, or enlargement, as provided in this
161 section, will enable the authority to maintain or increase its
162 income from such lands and facilities. It is further declared
163 that the actions authorized by this section serve a public
164 purpose and that in carrying out the provisions of this section
165 the authority is regarded as performing an essential
166 governmental function. The authority is expressly authorized and
167 empowered to do all acts or things necessary or proper to be and
168 serve as a local agency under part II of chapter 159, Florida

HB 1579

2006

Statutes, with respect to any project as defined therein. Any bonds issued by the authority pursuant to part II of chapter 159, Florida Statutes, shall be entitled to all the benefits contained in said part, including, but not limited to, ss. 159.31, 159.39, and 159.40, Florida Statutes ~~outstanding industrial development revenue bonds authorized by this section may not at any time exceed \$3 million in the aggregate.~~

Section 14. Law enforcement functions of the authority.--

(1) Definitions.--As used in this section, the term:

(a) "Air operations area" means a portion of the airport designed and used for landing, taking off, or surface maneuvering of airplanes.

(b) "Airport" means any real property the fee simple title to which is vested in the airport authority.

(c) "Airport grounds" includes all of the airport except for any property or facilities that are under the guidance, supervision, regulation, or control of New College ~~the University of South Florida.~~

(d) "Traffic," when used as a noun, means the use or occupancy of, and the movement in, on, or over, streets, ways, walks, roads, alleys, parking areas, and air operations areas by vehicles, pedestrians, or ridden or herded animals.

(3) Airport ~~authority~~ police.--

(a) The airport authority may provide for police officers for the airport authority, who shall be designated "airport ~~authority~~ police."

(b) The airport ~~authority~~ police are declared to be law enforcement officers of the state and conservators of the peace

HB 1579

2006

197 with the authority to arrest, in accordance with the laws of
198 this state, any person for a violation of state or federal law
199 or an applicable county or municipal ordinance if the violation
200 occurs on airport grounds. Airport ~~authority~~ police may also
201 make arrests in fresh pursuit off airport grounds for such
202 violations if pursuit originated on airport grounds. Airport
203 ~~authority~~ police have full authority to bear arms in the
204 performance of their duties and to execute search warrants
205 within the airport grounds. Airport ~~authority~~ police, when
206 requested by the Sheriff of Sarasota County, the Sheriff of
207 Manatee County, or the chief administrative police officer of
208 the City of Sarasota, may serve subpoenas or other legal process
209 and may make arrests of persons against whom arrest warrants
210 have been issued or charges have been made for violations of
211 federal or state laws or county or municipal ordinances.

212 (c) An airport ~~authority~~ police officer may enforce all
213 applicable laws or ordinances pertaining to traffic, parking, or
214 security on the airport grounds and may issue citations for such
215 violations.

216 (d) Airport ~~authority~~ police must meet the requirements of
217 the Transportation Security Federal Aviation Administration
218 prescribed in Title 49 ~~14~~, ~~Chapter 1~~, Parts 1542 ~~107~~ and 1544
219 ~~108~~, of the Code of Federal Regulations, relating to airport
220 security and airplane operator security. An airport ~~authority~~
221 police officer has the authority to enforce each security
222 program, and each passenger-screening program, required by the
223 Aviation and Transportation Security Act, Public Law 107-71, or
224 any successor statute.

HB 1579

2006

225 (e) An airport ~~authority~~ police officer shall promptly
226 deliver each person arrested and charged with a felony to the
227 sheriff of the county within which the offense occurred and each
228 person arrested and charged with a misdemeanor to the applicable
229 authority as may be provided by law, but otherwise to the
230 sheriff of the county in which the offense occurred.

231 (f) Each airport ~~authority~~ police officer must meet the
232 minimum standards established by the Criminal Justice Standards
233 and Training Commission of the Department of Law Enforcement and
234 chapter 943, Florida Statutes, for law enforcement officers.
235 Each airport ~~authority~~ police officer must, before entering into
236 the performance of his or her duties, take the oath of office
237 established by the airport authority. The airport authority
238 shall enter into a good and sufficient bond on each airport
239 ~~authority~~ police officer, payable to the Governor and his
240 successors in office, in the penal sum of \$5,000 with a surety
241 company authorized to do business in this state as surety
242 thereon and conditioned on the faithful performance of the
243 duties of the officer. The airport authority shall provide a
244 uniform set of identifying credentials to each airport ~~authority~~
245 police officer it employs.

246 (g) In the performance of any of the powers, duties, and
247 functions authorized by law, airport ~~authority~~ police have the
248 same rights, protections, and immunities afforded other law
249 enforcement officers by general law.

250 (h) The airport authority may exercise and perform all the
251 powers and prerogatives conferred upon law enforcement agencies

HB 1579

2006

by sections 932.701-932.704, Florida Statutes, with respect to forfeiture of contraband.

(i) The airport authority, with the approval of the Department of Law Enforcement, shall adopt rules, including, but not limited to, the appointment, employment, and removal of airport ~~authority~~ police and shall establish in writing a police manual, including examples of how to handle a routine law enforcement situation and an emergency law enforcement situation. The airport authority shall furnish a copy of the police manual to each of the airport ~~authority~~ police officers it employs.

(4) Traffic control ~~Airport authority parking enforcement~~ specialists.--

(a) The airport authority may provide for traffic control ~~parking enforcement~~ specialists for the airport authority, who shall be designated "traffic control ~~airport authority parking enforcement~~ specialists."

(b)1. A traffic control ~~An airport authority parking enforcement~~ specialist may enforce, on the airport grounds, all applicable laws and ordinances relating to parking and may issue citations for parking in violation of such laws or ordinances.

2. A traffic control ~~An airport authority parking enforcement~~ specialist may not carry a firearm or other weapon and does not have the authority to make arrests.

(c) Each traffic control ~~airport authority parking enforcement~~ specialist must meet the minimum standards established by the Criminal Justice Standards and Training

HB 1579

2006

279 Commission of the Department of Law Enforcement for traffic
280 control ~~parking enforcement~~ specialists.

281 Section 16. Beverage license.--

282 (2) Such beverage license shall be issued upon proper
283 application for license to conduct business, as provided by law.

284 The application must be in the name of the Sarasota Manatee
285 ~~Sarasota Manatee~~ Airport Authority, and when issued it must be
286 issued in the name of such applicant. The applicant shall pay to
287 the tax collector the license fee for the kind of license that
288 the applicant desires, as provided by the Beverage Law.

289 Section 2. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 1579

COUNCIL/COMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Council/Committee hearing bill: Local Government
Representative Reagan offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 1, subsection (1) of section 3, subsection (11) of section 5, subsection (1) of section 10, subsections (1), (3), and (4) of section 14, and subsection (2) of section 16 of section 3 of chapter 2003-309, Laws of Florida, are amended, and subsections (22) and (23) are added to section 5 of that section, to read:

Section 1. Short title.--This act may be cited as ~~shall be known by the popular name~~ the "Sarasota Manatee ~~Sarasota Manatee~~ Airport Authority Act."

Section 3. Creation and membership of authority.--

(1) There is hereby created a body politic and corporate to be known as the "Sarasota Manatee ~~Sarasota Manatee~~ Airport Authority" for the purpose of acquiring, constructing, improving, financing, operating, and maintaining airport facilities. The authority is constituted a public instrumentality, and the exercise by the authority of its powers

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

conferred by this act is deemed and held to be the performance of essential governmental functions.

Section 5. Powers of the authority.--The authority is authorized and empowered:

(11) To acquire real property in the name of the authority by gift, purchase, or the exercise of the power of eminent domain in accordance with the laws of this state which may be applicable to the exercise of such powers by counties or municipalities, including, without limitation, the leasehold interest of lessees under leases made by the authority as lessor; to acquire such personal property as it considers necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, operation, maintenance, or repair of any airport facilities; and to hold and dispose of all such real and personal property under its control. The power granted in this subsection, and under subsection (5) for acquisition of lands, is limited to lands or interests therein needed for airport purposes for the existing Sarasota Bradenton ~~Sarasota-Bradenton~~ International Airport; however, such limitation does not apply to any other lands or interests therein if:

(a) The acquisition is for a general aviation facility that is not acquired for purposes of accommodating major certified air carriers and the acquisition is approved by resolutions of the county and municipality, if any, within which such lands lie; or

(b) The acquisition is for use by major certified air carriers and has been approved in a referendum of electors in each of the Counties of Manatee and Sarasota.

Section 10. Industrial development revenue bonds.--

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

(1) It is the purpose of this section to authorize the authority to foster and encourage the development of industrial facilities, including pollution control facilities, to create or preserve employment opportunities, to protect the physical environment, to preserve and increase the prosperity of the Counties of Sarasota and Manatee, and to promote the general welfare of all their citizens without the use of public funds by issuing industrial development revenue bonds to assist the financing of such facilities. It is declared that there are a number of industrial facilities on lands presently owned by the authority which are greatly in need of reconstruction, improvement, remodeling, replacement, or enlargement in order that these lands and facilities may be best utilized pending any future use of such lands and facilities for airport purposes and that the financing of such reconstruction, improvement, remodeling, replacement, or enlargement, as provided in this section, will enable the authority to maintain or increase its income from such lands and facilities. It is further declared that the actions authorized by this section serve a public purpose and that in carrying out the provisions of this section the authority is regarded as performing an essential governmental function. The authority is expressly authorized and empowered to do all acts or things necessary or proper to be and serve as a local agency under part II of chapter 159, Florida Statutes, with respect to any project as defined therein. Any bonds issued by the authority pursuant to part II of chapter 159, Florida Statutes, shall be entitled to all the benefits contained in said part, including, but not limited to, ss. 159.31, 159.39, and 159.40, Florida Statutes ~~outstanding industrial development revenue bonds authorized by this section may not at any time exceed \$3 million in the aggregate.~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Section 14. Law enforcement functions of the authority.--

(1) Definitions.--As used in this section, the term:

(a) "Air operations area" means a portion of the airport designed and used for landing, taking off, or surface maneuvering of airplanes.

(b) "Airport" means any real property the fee simple title to which is vested in the airport authority.

(c) "Airport grounds" includes all of the airport except for any property or facilities that are under the guidance, supervision, regulation, or control of New College ~~the~~ University of South Florida.

(d) "Traffic," when used as a noun, means the use or occupancy of, and the movement in, on, or over, streets, ways, walks, roads, alleys, parking areas, and air operations areas by vehicles, pedestrians, or ridden or herded animals.

(3) Airport authority police.--

(a) The airport authority may provide for police officers for the airport authority, who shall be designated "airport authority police."

(b) The airport authority police are declared to be law enforcement officers of the state and conservators of the peace with the authority to arrest, in accordance with the laws of this state, any person for a violation of state or federal law or an applicable county or municipal ordinance if the violation occurs on airport grounds. Airport authority police may also make arrests in fresh pursuit off airport grounds for such violations if pursuit originated on airport grounds. Airport authority police have full authority to bear arms in the performance of their duties and to execute search warrants within the airport grounds. Airport authority police, when requested by the Sheriff of Sarasota County, the Sheriff of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Manatee County, or the chief administrative police officer of the City of Sarasota, may serve subpoenas or other legal process and may make arrests of persons against whom arrest warrants have been issued or charges have been made for violations of federal or state laws or county or municipal ordinances.

(c) An airport authority police officer may enforce all applicable laws or ordinances pertaining to traffic, parking, or security on the airport grounds and may issue citations for such violations.

(d) Airport authority police must meet the requirements of the Transportation Security ~~Federal Aviation~~ Administration prescribed in Title ~~49~~ 14, ~~Chapter 1~~, Parts 1542 ~~107~~ and 1544 ~~108~~, of the Code of Federal Regulations, relating to airport security and airplane operator security. An airport authority police officer has the authority to enforce each security program, and each passenger-screening program, required by the Aviation and Transportation Security Act, Public Law 107-71, or any successor statute.

(e) An airport authority police officer shall promptly deliver each person arrested and charged with a felony to the sheriff of the county within which the offense occurred and each person arrested and charged with a misdemeanor to the applicable authority as may be provided by law, but otherwise to the sheriff of the county in which the offense occurred.

(f) Each airport authority police officer must meet the minimum standards established by the Criminal Justice Standards and Training Commission of the Department of Law Enforcement and chapter 943, Florida Statutes, for law enforcement officers. Each airport authority police officer must, before entering into the performance of his or her duties, take the oath of office established by the airport authority. The airport authority

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

shall enter into a good and sufficient bond on each airport authority police officer, payable to the Governor and his successors in office, in the penal sum of \$5,000 with a surety company authorized to do business in this state as surety thereon and conditioned on the faithful performance of the duties of the officer. The airport authority shall provide a uniform set of identifying credentials to each airport authority police officer it employs.

(g) In the performance of any of the powers, duties, and functions authorized by law, airport authority police have the same rights, protections, and immunities afforded other law enforcement officers by general law.

(h) The airport authority may exercise and perform all the powers and prerogatives conferred upon law enforcement agencies by sections 932.701-932.704, Florida Statutes, with respect to forfeiture of contraband.

(i) The airport authority, with the approval of the Department of Law Enforcement, shall adopt rules, including, but not limited to, the appointment, employment, and removal of airport authority police and shall establish in writing a police manual, including examples of how to handle a routine law enforcement situation and an emergency law enforcement situation. The airport authority shall furnish a copy of the police manual to each of the airport authority police officers it employs.

Section 16. Beverage license.--

(2) Such beverage license shall be issued upon proper application for license to conduct business, as provided by law. The application must be in the name of the Sarasota Manatee ~~Sarasota-Manatee~~ Airport Authority, and when issued it must be issued in the name of such applicant. The applicant shall pay to

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

the tax collector the license fee for the kind of license that
the applicant desires, as provided by the Beverage Law.

Section 2. This act shall take effect upon becoming a law.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

An act relating to the Sarasota Manatee Airport Authority;
amending chapter 2003-309, Laws of Florida; authorizing
and empowering the authority to be and serve as a local
agency under part II, chapter 159, F.S., the Florida
Industrial Development Financing Act; eliminating the
aggregate limit on outstanding industrial development
revenue bonds issued by the authority; deleting hyphens in
"Sarasota-Manatee Airport Authority" and "Sarasota-
Bradenton International Airport"; substituting the
Transportation Security Administration for the Federal
Aviation Administration as the federal agency authorized
to enforce security programs; changing the reference to
adjacent campus from "University of South Florida" to "New
College of Florida" for purposes of defining "airport
grounds"; providing an effective date.